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“SEASONING MERCY WITH JUSTICE”:
CONSIDERING GENDER, RISK AND RECIDIVISM IN THE
PUNISHMENT AND SUPERVISION OF
FEMALE WHITE COLLAR OFFENDERS

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A DISSERTATION APPROVED FOR THE
DEPARTMENT OF SOCIOLOGY

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DEDICATION

I dedicate this dissertation to the two people who always knew I would never give up: my wonderful husband and best friend, Lee, and, my mentor and Committee Chair, Dr. Susan Sharp. Through ten years of personal and academic toil, both have stood with me, encouraged me, and in those times when the end was simply too far away and too overwhelming to contemplate, they showed me the light. I will never be able to express my gratitude for their unending confidence in me. With them at my side, I knew I would never give up, because I could never let them down.

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ABSTRACT

This study examined the impact of risk factors and existing federal sentencing policies and practices on the likelihood of recidivism for female white collar offenders. The research combined and expanded prior literature on female offending, white collar crime, and recidivism, by creating a “profile” of the female white collar offender, identifying risk factors of recidivism from female offending and feminist pathways literature present in the population of federal female white collar offenders, and informing revision of current federal sentencing policies that result in the imposition of unnecessarily harsh sanctions for this group of low-risk, first-time (and likely one-time), female offenders. No prior studies have applied theories of feminist pathways offending to recidivism by female white collar offenders. Data from a recent national data set of offenders who began a term of federal probation or supervised release between October 1, 2004 and September 30, 2007 were used to provide a fresh look at female white collar offenders sentenced after implementation of the mandatory United States Sentencing Guidelines, but before judicial discretion was returned to federal sentencing courts by the United States Supreme Court. Overall, the study found that female white collar offenders are plagued by risks of recidivism common to all types of female offenders, including those recognized in pathways literature, and their profile more closely resembles the female offender than the public’s image of a “white collar” offender.

INTRODUCTION

"Why can't a woman be more like a man?"¹ The American criminal justice system has taken the words of Professor Higgins to heart in sculpting the body of crime and punishment for female offenders. Male-centered policies and practices that dominate our federal criminal justice system have been shown to be inadequate in the treatment of female white collar offenders as they fail to address the specific risks and needs of women relevant to punishment and rehabilitation. While there is much confusion over defining white collar crime and the white collar criminal, even more confounding is the lack of gendered solutions for the females who commit these crimes.

Although frustration is widespread with the inability of the criminal justice system to recognize and adopt gender-appropriate practices, this research focused specifically on the voids that affect federal female white collar offenders in decisions relating to punishment and recidivism. Despite a rich body of literature on theories of white collar crime, female offending, punishment, and the lack of attention to gendered needs by the criminal justice system, no prior study has attempted to establish a profile of a federal female white collar offender and examine the negative impact of the federal sentencing structure on this group of low-risk offenders. Due to the difficulty in gaining access to large national federal offender data, the vast majority of past studies have relied on data collected from limited geographic districts, some now well over 30 years old. Others have utilized state offender data to make

¹ This is a reference to the character, Professor Henry Higgins, who performs a song by this name in the 1964 musical written by Alan Jay Lerner and Frederick Loewe, "My Fair Lady."

assumptions about all white collar offenders, even though they may not be representative of those convicted in the federal system. This study makes a timely and unique contribution to the literature by relying on a national sample of federal female white collar offenders from a restricted access data set of all federal offenders who began a term of supervised release or probation between October 1, 2004 and September 30, 2007. The purpose of this study was to add to the limited body of knowledge regarding the effects of federal sentencing policies on the post-conviction outcomes of low-risk female offenders convicted of white collar crimes. Prior studies of female white collar offenders, and the impact of incarceration on female offenders and first offenders, were extended by analyses of recidivism during a term of probation or supervised release following release from prison. This study is meant to inform criminal justice system decision-making as to punishment, supervision and treatment of these low-risk, often first-time, offenders, and to aid in resolving public policy conflicts between ensuring public safety and facilitating successful reintegration.

This research was framed in a feminist pathways theoretical perspective, which posits that females follow different paths to offending than males; that without intervention, they follow those paths through the criminal justice process and into recidivism; and that the system's response does not adequately address those gendered differences to effectively achieve the goals of punishment, supervision, rehabilitation and reintegration. As with Daly's (1992) ground-breaking study of women's pathways to felony court, this research did not develop or test theories of crime causation, as "any theory of crime or criminal behavior cannot be generated from

samples of criminalized or incarcerated populations alone" (p. 21). Rather, this study examined some of the pathways that plague female white collar offenders and bring them to the point of recidivism. It expands Daly's (1989) study of federal female white collar offenders in which she found that "[w]omen's economic marginality, not liberation or occupational mobility," explained their offending, and that men's white collar offending was not the "norm" from which women deviate (p. 70).

Subjecting a first-time female offender to incarceration has been shown in the literature to increase her likelihood of recidivism, compared to alternative punishment models that allow her to foster family relationships (especially with her dependent children) and fulfill responsibilities inherent to the feminist ethic of care (Gilligan 1982, 1995). A woman's sense of relationality guides her through the pathways to crime, and can act as both a catalyst and a deterrent to offending (Covington 1998b). The low-risk white collar female offender caught in the widening net of federal criminality and "equality of justice" policies imposed over the last two decades provided a strong example to demonstrate the effects of a systemic failure to apply long-recognized gender differences in the punishment and treatment of federal female offenders. This study identified significant risk factors that impact the ability of female white collar offenders to successfully complete a term of probation or supervised release following imprisonment, or to reoffend.

CHAPTER 1

WHAT IS "WHITE COLLAR CRIME"?

The concept of white collar crime is nearly 75 years in the making. The historical and sociological evolution of the term can be traced to studies of predominantly male populations. Unlike other categories of crime easily recognized and labeled as “criminal acts” (i.e., burglary, assault, murder), offenses associated with the term “white collar crime” (i.e., embezzlement, tax evasion, insider trading) are difficult to define and lack social consensus as to whether the label of “criminal act” truly applies to them. The distinction between white collar crime and those commonly termed “street crimes” has created an impasse in reaching empirical agreement on what constitutes “white collar crime.”

Edwin Sutherland (1940) began his studies by comparing crime in the upper or "white collar class" to that of the lower class. His research took place during a time when crime was presumed to be caused by poverty or personal and social characteristics associated with poverty. He proposed that this explanation did not account for crimes by middle and upper class (male) business professionals committed in the context of their occupations, such as creating false financial statements, stock manipulation, commercial or public official bribery, false advertising, embezzlement, and so forth. These acts were violations of an implied trust that lowered social morale and created social disorganization (Sutherland 1940).

In 1941, Sutherland defined white collar crime as "a violation of the criminal law by a person of the upper socioeconomic class in the course of *his* occupational activities" (emphasis added) (p. 112). He suggested that white collar offenders

escaped criminal conviction due to their standing in the community, as well as a lack of social consensus for punishing them as individuals when the corporations for which they worked were subject to civil and administrative sanctions. Sutherland (1944) questioned whether white collar crime met the two criteria needed to define crime: (1) the legal description of an act as socially injurious, and (2) legal provision for a penalty. Although today certain statutory offenses are perceived as “white collar,” the debate over the extent of their social harm continues.

Clinard and Quinney (1973) replaced "white collar crime" with two constructs: "occupational crime," which they defined as "offenses committed by individuals for themselves in the course of their occupations and the offenses of employees against their employers," and "corporate crime," defined as "offenses committed by corporate officials for their corporations and the offenses of the corporation itself" (Braithwaite 1985:19), citing Clinard and Quinney (1973). Coleman (1987) supported the concept of white collar crime as a violation of the law in the course of legitimate occupation or financial pursuit by persons respected in their communities, with economic gain or occupational success as its goal. He excused the fact that white collar crime led to more deaths and injuries than any other type of crime by arguing that the violence was always a by-product of the offense and not the immediate goal. Friedrichs (2007:5) also conceived of white collar crime as occurring "in a legitimate occupational context" motivated by the objective of economic gain or occupational success, and not characterized by direct, intentional violence. Little has changed in the public's perception of white collar crime over these 75 years. And academically, the concept remains murky.

Controversies linger over whether the appropriate unit of analysis for white collar crime is the offense or the offender (Holtfreter 2005). Croall (2001:8-9) identified critical characteristics that distinguished the concept from ordinary crimes, and which contributed to the confusion, such as invisibility, taking place in the private sphere, involving abuse of trust, technical or insider knowledge, complex, highly organized, different patterns of victimization, ambiguous legal and criminal status, apparent lack of intent, and low rates of detection and prosecution. According to Menard et al. (2011:3-4), today "the common thread appears to be agreement that this study of white collar crime constitutes economically based, non-conventional criminal behavior; some violation of trust; some form of personal gain which is usually either directly or indirectly financial in nature . . .; and the absence of direct or overt violence." While this description is certainly accurate, the convolution of the concept has led to the absence of an empirically sound method of defining white collar crime, the offender, or the offenses. Many modern crimes never contemplated by Sutherland's theories are now integrated within the white collar crime concept, such as credit card fraud, telemarketing, and cybercrime. As with all classifications of crime, social change is the catalyst for the evolution of laws on the books. In the case of white collar crime, such evolution has taken these crimes far outside the scope of the offender's employment and into an even more perplexing realm.

The lack of agreement on a valid construct of white collar crime has created a theoretical void in guiding criminal justice policy. Virtually every criminological theory has attempted to explain white collar crime. However, there has been little consistency in the construct of white collar crime, thus skewing the limited body of

research. While the lack of a valid construct should make attempts at reliable classification of white collar crimes impossible, it has not stopped the practice. For example, Daly (1989) rejected crimes such as embezzlement, fraud and forgery under the Uniform Crime Reports ("UCR") as good measures of white collar crime because they were not corporate or occupational crimes. Others argued that most white collar offenders were not typically high status individuals and were more likely to be from middle class backgrounds committing "garden variety" crimes (Weisburd et al. 1991). Benson and Moore (1992) chose bank embezzlement, bribery, income tax violations, false claims and statements, and mail fraud as "white collar crimes" in their study of the applicability of Hirschi and Gottfredson's (1987) general theory of crime to white collar crime. These same crimes were previously used by Wheeler et al. (1988) and Hagan (1980). Coleman (2002) divided white collar crimes into six categories: employee theft, embezzlement, computer crime, fraud and deception, conflict of interest, and bribery and corruption. Gottschalk (2010) categorized white collar crime into four main forms: corruption, fraud, theft and manipulation.

In Ragatz and Fremouw's (2010) recent examination of the literature, they found that the conceptual controversies had taken their toll: earlier studies lacked a comparison group, making it impossible to determine whether white collar criminals were distinct from other offenders; the generalizability of findings was limited due to various definitions of white collar crime and qualifying offenses; and three fairly recent studies had used the same data set that was over 30 years old. Demographics likely differ between white collar offenders – especially females – of the 1970s and now, but they should also differ between those who have not been convicted of their

crimes and those who have. Some research has relied on samples of college students to study tendencies to commit white collar crime, without making a distinction between those results and results from actual offenders convicted of their crimes.

The literature is unconvincing in showing that white collar crime should be an offender-based construct. While the media may portray the “white collar offender” as an upper class (usually male) CEO or bank president, there is an empirical and practical disconnect from that perception and the offenders classified as such that find their way into the criminal justice system. The majority of studies have focused on male offenders, and those that have included data for males and females have failed to identify differences in their characteristics relevant to the current analysis. To establish an offense-based working concept for this research, the operational definition of white collar crime by Edelhertz (1970), a former section chief in the United States Department of Justice, was used to identify white collar offenders in the data used for this study: "an illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage" (p. 3). This definition best encompasses the variety of criminal statutes charged in federal white collar crime prosecutions during the past two decades. Edelhertz intended it to embrace crimes by individuals for personal gain outside an occupational role, as well as those committed in the course of employment in violation of a duty of trust and loyalty.

Unfortunately, selecting a definition for white collar crime for this study did not resolve the dilemma over whether such conduct is viewed by society as

threatening to the social order, and thus even worthy of the label "crime." Actions only become deviant when society reacts to them as being problematic. Despite reservations as to the seriousness of these offenses in terms of social harm, Congress initiated a decade-long legislative effort beginning in the 1970s to broaden the scope of statutory acts falling within the rubric of "white collar crime" (without defining the term) and to increase the severity of punishment with a specific eye on general deterrence of employees and corporate executives (Boss and George 1992).

There is evidence that the public perceived white collar crimes as less serious because they did not believe they had a direct effect on individuals (Rosenmerkel 2001). Hawkins (1980) found that perceived seriousness was related to perceptions of punishment, which tended to vary not only with the characteristics of the crime, but also the characteristics of the offender. Other research suggests that individuals generally rated crimes differently based on perceptions of wrongfulness and harmfulness (Warr 1989). Rosenmerkel (2001) added white collar crimes to Warr's study and found they were considered more harmful, more wrongful, and thus more serious than property offenses, but less so than violent crime. Levi (2006) discussed the impact of possible media bias against reporting white collar crime as a result of media ownership by big business, suggesting media coverage, or the lack of it, influenced the public discourse and constructions of white collar crime, which in turn influenced the allocation of enforcement resources and decision-making by juries. He cautioned that controlling pretrial publicity stifled public awareness, making prosecution of powerful offenders less urgent, and non-prosecution important to those defendants' reputations. Schoepfer, Carmichael and Piquero (2007) found that

because white collar criminals did not fit the stereotype of the "criminal," those who shared the same class and values were less likely to sanction their conduct.

Despite decades of using the term in the media and public discourse, to this date there are no references to "white collar" crime in the federal criminal offense statutes, and many of the offenses that have come to be so classified are committed by persons outside the boundaries of an occupational environment. The state of confusion historically and presently can be summed up in Sutherland's response to criminologist Edwin Lemert, who once asked him whether he was suggesting that white collar crime was committed by a special class of people: Sutherland replied "he was not sure. . ." (Geis 1991:13), citing Sparks (1979).

CHAPTER 2

THEORIES OF WHITE COLLAR OFFENDING

Virtually every classic and contemporary criminological theory has been tested to determine its ability (or inability) to explain white collar crime. As Simpson (2010) noted:

It is difficult to measure white collar crime because all of the typical sources of crime data (including official data, offender self-reports, and victimization reports) are limited in scope, not collected in a systematic manner, or have unique problems that discourage operationalization and generalization. . . . [T]he 'hidden' figure of white collar and corporate crime remains cloaked in mystery. (Pp. 482-483, 485).

A common theme among these studies is the exclusion, or at best limited examination, of female white collar offenders. While the current study did not attempt to critique or endorse a particular theory of white collar offending, a brief theoretical overview is warranted to identify common characteristics of male and female white collar offenders, and to bring those factors into a discussion of their importance in the context of criminal justice and judicial decisions to prosecute and punish.

Differential Association Theory

The first to create a theory directed toward white collar offending was Sutherland. In 1940, at the same time he classified crimes of the upper class as "white collar," he proposed that such criminality, like all criminality, was learned through direct or indirect association with those who already practiced the behavior, which he referred to as "differential association." He suggested that differential

association culminated in crime when a community was not organized solidly against that behavior (i.e., social disorganization). White collar criminals were generally not regarded as "real criminals" due to their differences in social position, and because of their power in society, they had a voice in what behaviors were criminalized and how the law was implemented and administered. Their victims were weak, lacked technical knowledge, and could not protect themselves. By contrast, the victims of "real criminals" (those of the lower class) were often people of wealth and power. Taking a cue from Durkheim ([1895] 1982), Sutherland (1941) explained that white collar crime disrupts the collective conscience of a community usually garnered in the enforcement of criminal laws, because it is those to whom the community generally turns for help that are the perpetrators. This disruption is still found today, as demonstrated in Van Slyke and Bales' (2012) study of the impact of the recent Enron scandal on the increased severity in white collar sentencing following widespread national publicity. Durkheim, however, also believed that women were "asocial, biological beings" that suffered less social stress and were less apt to be affected by economic or social conditions because (1) "being a more instinctive creature than man, woman has only to follow her instincts" and (2) "[women] are much less involved in collective existence; thus, they feel its influence – good or evil – less strongly" (Steffensmeier and Haynie 2000), citing Durkheim (1951:272, 299) and Lehmann (1995:912). The current research would suggest the contrary.

Reintegration and Shaming

Braithwaite (1985) took issue with Sutherland's definition of white collar crime, noting that the concept of "respectability" defied precision, and that "high

social status" was an unfortunate mixing of definition and explanation. This made white collar crime an "impotent construct" for building a theory in sociology, according to Braithwaite (1985:3). He did agree with Sutherland that there was a need for a theory of organizational crime control without conviction, incorporating the significance of the reaction of white collar offenders to informal publicity and prosecutorial threats. Braithwaite suggested that white collar offenders have more to lose by criminal conviction or stigmatization, including status, respectability, money, job opportunities, a comfortable home and a family. This same philosophy applied to females, in that their ethic of care elevated their concerns over how their offending would impact those for whom they were caregivers and protectors.

Interactionist Theory

The next offering was an integrated theory of white collar crime by Coleman based on contributions from his predecessors in social-psychological and structural research (1987). He distinguished between crimes committed by an organization to further its own ends, and occupational crimes committed by and for the benefit of individuals without organizational support. These crimes were rational calculating crimes, not crimes of passion, with the goal of economic gain or occupational success leading to economic gain. His theory was based on the hypothesis that criminal behavior results from a coincidence of appropriate motivation and opportunity. Coleman's interactionist theory also incorporated the idea that symbolic constructs motivating criminal behavior are learned from associating with criminal others, much like Sutherland's notion of differential association.

Self-Control Theory/General Theory of Crime

Before unveiling their "general theory of crime," Hirschi and Gottfredson (1987) announced that their theory would be "capable of organizing the facts about white collar crime at the same time it [was] capable of organizing the facts about all forms of crime" (p. 949). For them, the invention of the concept of white collar crime had two desirable consequences: it falsified the poverty-pathology theory, and it revealed the criminality of the privileged classes and their impunity to the law. In dealing with whether white collar crime was actually "crime," they proposed that, when it came to the use of force and fraud, crime was possible at all social levels. Thus, a "general" theory should apply without difficulty to the crimes of the rich and powerful; crimes committed in the course of an occupation; and crimes in which a position of power, influence or trust was used for the purpose of individual or organizational gain. They argued that motivational elements were not needed to distinguish white collar crime from other forms of crime because, as with common crime, the white collar offender seeks personal benefit which may come directly to the offender or indirectly to the offender through the group or organization to which he or she belongs.

Hirschi and Gottfredson (1987) discounted assumptions that offenders specialized in particular crimes, and saw no evidence that offenders committing embezzlement, fraud and forgery were causally distinct from other offenders. Theirs was a theory of what restrained people from crime rather than what pushed them into crime, which they defined as "self-control." They found an absence of most indicators of low self-control in people in occupations that required educational persistence, willingness and ability to defer to the interests of others, and attention to

conventional appearance, therefore predicting a relatively low rate of offending among white collar workers. Although their sample included females, they were excluded from the final analyses. Overall, their theory asserted that the distinction between crime in the street and crime in the suite was an offense rather than an offender distinction, and that offenders in both cases shared similar characteristics of low self-control.

Some research, however, contradicted Hirschi and Gottfredson's findings that white collar offenders had a propensity to seek short-term immediate pleasures (Steffensmeier 1989). He demonstrated that the age-crime curve was substantially different for white collar than other offenses, and that male and female offending rates, as well as black and white rates, were much closer than for other types of crimes. Females' likelihood of arrest was much higher for fraud, forgery and embezzlement than for other index crimes. In response, Gottfredson and Hirschi (1990) proposed that their theory also posited that individual differences in propensity to engage in criminal acts were stable over time, and the frequency with which individuals engaged in criminal acts declined with age. They suggested the general theory applied across the life course, and by adulthood, the rate of deviant behavior declined due to social control through bonding and attachment to others. They summarized their theory with respect to white collar crime as predicting (1) a relatively low rate of offending among white collar workers, (2) differences in demographic correlates across crimes are nonexistent given similar opportunity structures, and (3) a lack of social support for most white collar crimes. As to differences in offending between males and females, they believed that "gender differences for all types of crime are established

early in life and that they persist throughout life," suggesting a "substantial self-control difference between the sexes" (Gottfredson and Hirschi 1990:147). Girls would have higher levels of self-control than boys as the result of closer supervision and punishment of deviant behavior by their parents.

The next critique of the application of self-control theory to white collar crime came from Benson and Moore (1992). They criticized the theory for distinguishing between offenses rather than offenders, arguing that self-control and opportunity were complexly related, and that motives could not be ignored as causal forces. White collar offenders started much later in life, and had lower rates of offending as well as lower levels of involvement in other forms of deviance. The general theory could not explain all white collar offending, as it ignored the reality that any given level of self-control might be overcome by changes in an individual's personal situation. Benson and Moore (1992) proposed that middle class white collar offenders were motivated by the desire to avoid failure and to protect their relative position in life. They suggested three paths to white collar crime: (1) offenders with low self-control who impulsively pursued their own self-interest through fraud whenever opportunity arises, (2) offenders with high self-control who employed it to pursue ego gratification in an aggressive and calculating manner, and (3) offenders who might take advantage of criminal opportunities depending on other aspects of their personal situations (i.e., the middle path).

The literature on female offending discussed below would place most female white collar offenders on Benson and Moore's (1992) "middle path," as they are much more likely than males to first offend as adults, are often motivated to respond to a

relational crisis involving economic desperation or recruitment by a spouse or partner that challenges their responsibilities toward an “ethic of care” as suggested by Gilligan (1982), and in some cases are presented with workplace opportunities and occupational positions to fulfill their immediate financial needs that would not have been available to them at a younger age. Rarely do female white collar offenders seek self-satisfaction or ego-gratification in the commission of their crimes (Benson and Moore 1992).

Life Course Theories

Developmental and life-course theories of individual criminality began primarily with the work of Sampson and Laub (1990) to rebut Gottfredson and Hirschi's (1990) self-control theory. These theories were based on age-graded explanations of individual crime that conformed in great part to the age-crime curve. They argued that while continuity in deviant behavior existed, social ties in adulthood to family, employment, and the community explained changes in criminality over the life span. They defined the life course as "pathways through the age differentiated life span," where age differentiation "is manifested in expectations and options that impinge on decision processes and the course of events that give shape to life stages, transitions and turning points" (Sampson and Laub 1990:65, quoting Elder 1985).

In 2003, Sampson and Laub updated their studies, concluding that the aggregate age-crime curve was not the same as individual trajectories, but that crime declined with age even for active offenders. Although peak ages of offending varied by crime type, they found all offenses declined in the middle adulthood years (Sampson and Laub 2003). Unfortunately, these explanations do not account for

white collar offenders – especially females – who do not begin offending until later in life, at a time when most of those explained by the life course perspective have "aged out" of crime.

To overcome the deficiencies of the traditional life course perspective in explaining white collar crime, Piquero and Benson (2004) offered a pattern they called "punctuated situationally dependent offending." This concept assumed that white collar offenders followed the same developmental trajectories in crime and delinquency as most people. However, their theory was that white collar offending was "situational" in that it was triggered by or dependent on factors external to the offender, such as being faced with an occupational opportunity that was not earlier available, or experiencing a personal or occupational crisis. They assumed that white collar criminal opportunities available to middle- and upper-class individuals later in life were unique from those available to others in different social circumstances (Piquero and Benson 2004). For example, they suggested that the culture of a particular organization might encourage offending inside its walls. They also insisted that these white collar offenders had more to lose in terms of material, occupational and social success than ordinary offenders, the so-called "fear of falling," and that threats to their social or economic standing or family crises could prompt a resort to crime (Piquero and Benson 2004:160), citing Wheeler (1992).

Adult-Onset Offending

The pattern of age-specific prevalence rates for white collar crimes involving a breach of trust (i.e., counterfeiting, embezzlement, forgery, fraud, income tax or mail fraud) has been found to differ dramatically from that of conventional offenses, with

crimes of trust being much more frequent during adulthood (defined as early- to mid-30s) (Menard et al. 2011). The most common offender characteristics for crimes of trust were alcohol use, being male, having trouble with drugs, and being divorced, but with few differences in these factors being related to gender. Thus, the correlates of crimes of trust were similar to those for conventional crime (Menard et al. 2011:908-912). Harris (2011) hypothesized that first-time adult-onset offenders were more like repeat offenders in terms of experiencing employment difficulties, dysfunctional marital and family relations, financial problems and disruption in living accommodations. She predicted that the timing of recidivism would be related to the extent of prior involvement in the justice system and the frequency of occurrences of failure during supervision (i.e., technical violations of conditions of supervision), with first-time adult-onset offenders experiencing the lowest failure rates. Harris (2011) defined "first offender" as one who lacked any official criminal history, including arrests or convictions, other than the current offense. She found that first-time adult-onset offenders had a 33% recidivism rate, and underscored the importance of events in adulthood in explaining the onset of, as opposed to merely desistance from, criminal behavior.

Data from fairly recent studies have shown that the majority of individuals convicted of white collar crime in the federal system were not wealthy, high-powered corporate executives, but rather members of the middle class with moderate incomes and lower level jobs (Weisburd and Waring 2001). For first-time white collar offenders, the average age of onset was 40.9 years. Even for those with at least two prior arrests, the average age of first arrest for a white collar crime was 33.5 years.

The average age of last arrest for repeat white collar offenders was 43, although a substantial number were arrested in their 50s and a smaller number continued to be active into their 70s. There was little evidence that white collar offenders specialized to any notable degree. Weisburd, Waring and Chayet (2006:58) found in a sample of white collar offenders that 50% had no prior arrests, and "[m]ost lead lives that give no indication, beyond the criminal acts for which they were prosecuted, that they would have contact with the criminal justice system."

General Strain Theory

Langton and Piquero (2007) analyzed the ability of Agnew's (1992) general strain theory to explain white collar crime. Agnew postulated that strain need not be specifically tied to economic status because it was actually a psychological reaction to any perceived negative aspects of one's social environment. Thus, individuals from all social classes could engage in criminal behavior because they could all experience negative emotions arising from strain, and Agnew's theory intended to provide an individual explanation for why crime occurred, as well as why it did not occur, across all levels of society. Crime and delinquency was a means to alleviate strain-induced negative emotions when legitimate coping strategies were not utilized or were unsuccessful.

For Langton and Piquero (2007), the proper conceptualization of white collar crime and the actual offenses were important. They noted that social status generally differentiated offenders who committed more complex offenses, such as antitrust and securities violations, from those who committed credit card fraud and embezzlement. They argued that strain theory could only predict "lower-level" white collar offenses

that were more individual in nature and motivated by self-interest (e.g., mail and wire fraud, bank embezzlement). Their presumptions relied heavily on the offender's social status rather than the nature of the crime. However, their categorization of "mail and wire fraud" as a low-level offense was flawed, as those specific federal statutes are commonly prosecuted as major white collar offenses. Nor did they caution that the offense of conviction might not reveal the extent or severity of the criminal conduct, particularly when the defendant pled guilty to a lesser offense in lieu of trial and the other charges were dropped.

Langton and Piquero (2007) branded personal and financial motivations as those that would fit in the general strain model for white collar offending, but determined that business motivations did not directly relate to the self-interest of the offender and were more suited to organizational theory explanations. However, it is difficult to imagine that an individual would commit "corporate" crime without being motivated by self-interest. These shortcomings call into question Langton and Piquero's conclusions that white collar offenders do not respond to strain in the same ways as other offenders, and that their motivations so differ as to take them completely outside the scope of Agnew's theory.

Theories of Female White Collar Offending

In the first major scholarly effort to focus on white collar female offenders, Daly (1989) offered a feminist perspective of white collar crime. She distinguished between offense-based and offender-based approaches, both of which were historically advanced through male-based research. Daly offered five hypotheses: (1) the female share of corporate crime is very low; (2) the female share of occupational

crime is low; (3) women are less likely to work in crime groups than men; (4) women's economic gains from crime are less than those of men; and (5) men's and women's motives for criminal involvement differ. She used the Wheeler, Weisburd and Bode (1982) data set of federal white collar defendants convicted from 1976 to 1978 in seven federal districts for bank embezzlement, income tax fraud, postal fraud, credit fraud, false claims and statements, bribery, and antitrust and securities fraud. Wheeler and colleagues applied an offense-based approach to their data collection, and broadly defined "white collar crime" as "economic offenses committed through the use of some combination of fraud, deception or collusion" (Daly 1989:773).

Daly (1989:770) suggested it was "imperative that we understand the characteristics of acts falling in the presumptive 'white collar' statutory domain, how they are organized both within and outside workplace settings, and their class-, gender- and race-specific nature." She insisted the significance of those characteristics were totally dependent on whether one could agree that white collar crime was offense-based rather than offender-based, and "different definitions affect how scholars conceptualize gender and white-collar crime" (Daly 1989:770). These issues were also critical to the current study. By example, Daly cites Zietz's (1981) comparison of women in prison for fraud and embezzlement to Cressey's (1964) male population, finding that unlike Cressey's men, women were more likely motivated to commit their crimes as a result of a need to meet their responsibilities as wives or mothers (Daly 1989:771). Zietz (1981:58) described them as having a "Joan of Arc quality . . . a willingness to be burned at the stake" to maintain family and marital relationships. By contrast, Cressey's men rationalized their crimes as "borrowing"

and not motivated by family or marital needs.

This motivation for females finds further support in the application of Gilligan's (1982) relational theory to the feminist pathways perspective. In her theory that women share an "ethic of care" unique from the "ethic of justice" of men, Gilligan (1982) observed that a morality focused on care "centers moral development around the understanding of responsibility and relationships, just as the conception of morality as fairness ties moral development to the understanding of rights and rules" (p. 19). However, as discussed later, this trait may be related to both motivation to offend and restraint from offending.

Daly's (1989) female sample (14% of the total of 1,342 offenders) was predominantly charged with bank embezzlement (45%), and with postal fraud, credit fraud, and false claims and statements, each representing 15% to 18% of the sample. A high percentage of women (30 - 40%), and about 25% of men convicted of postal fraud, credit fraud and false claims had no labor force ties to their offenses. The vast majority of men were professional or managerial workers, while only a small minority of women were professionals or managers, with most being clerical workers. Daly found offense- and gender-specific variability in whether an offender used an occupational role to carry out the offense, in the use of organizational resources to commit the crime, and in motive. Men's attempted economic gain was higher than that of women in all offense categories. In a study by Rothman and Gandossy (1982), "women more often admitted guilt, more readily acknowledged personal responsibility for the offense, provided stronger justifications for their crimes, and were more likely to express remorse" (Daly 1989:786).

According to Daly (1989:786), the most frequent motive for female offenders was financial need for their families (30-35%), which was similar for men (25-40%). However, the relative importance of self and family in need-based justifications, and the degree to which women were influenced by others, varied by offense. Most female offenders worked alone, while male offenders tended to commit their crimes in groups. Daly found that gender differences were tied in part to positions within the organizational hierarchy. Overall, she found that it was women's economic marginality, and not high status occupational positions derived from liberation or mobility, that accounted for their offending. Further, she cautioned that men's white collar crime was not the "norm" from which female offenders deviate, and that women's crime must be explored independently (Daly 1989:790). Belknap (2007) noted that the gender differences in Daly's study were so stark and the nature of the crimes so different as "to make one wonder whether the crimes of most of these women should really be classified under white collar offenses" (pp. 116-117).

To identify variables that differentiated male and female white collar offenders from non-offenders, Collins et al. (2001) applied the gendered theory of crime developed by Steffensmeier and Allan (1995, 1996). This theory proposed that such factors are biological, opportunistic, motivational and circumstantial, and that males and females differ in moral development and social controls. They found no significant differences between two female groups of offenders and non-offenders as to empathy, self-control, socioeconomic status, maternal warmth, and sibling rivalry. However, "socialization, responsibility and measures of leadership, peer-involvement and social dominance all differentiated female criminals from the female

non-criminals” (Collins et al. 2001:6). Without exception, the incarcerated white collar female offenders "revealed that the reasons for the crimes were to obtain money for humanitarian reasons: [s]pouses or boyfriends were in financial trouble; parents with minimal financial resources incurred large costs for healthcare; or there were lack of funds to provide essentials for the children," and most expressed remorse, especially for "the ‘trouble’ [they] caused others" (Collins et al. 2001:7, 8).

Klenowski, Copes and Mullins (2011) interviewed 20 male and 20 female federal white collar inmates who had committed crimes of embezzlement, false corporate reporting, false bank or credit loans, securities violations, and tax fraud while in a position of fiduciary responsibility and trust. Demographics between the groups were similar. All justified or excused their crimes by appealing to higher loyalties, denying injury, claiming their acts were normal, claims of entitlement, condemning the condemners, and denying responsibility. However, for males, the most common justification was their "breadwinner" role, while for females it was to provide support and aid to those for whom they cared.

Most recently, Steffensmeier, Schwartz and Roche (2013) found that Steffensmeier and Allan's (1996) gendered paradigm of criminality explained women's involvement in major white collar crimes by emphasizing the enduring role of gendered focal concerns and socialization, as well as the gendered nature of opportunity (p. 451). They found gender differences toward crime arose from different focal concerns of men and women, including norms that disapproved of female deviance based on "nurturant role obligations encouraging the centrality of social relationships and cooperative, communalistic orientations" (Steffensmeier et al.

2013:451). These concerns also shaped the "doing" of gender "by guiding expectations and appraisals of others and self with regard to risk-taking and criminal behavior" (Steffensmeier et al. 2013:451-452). Women were restrained from injurious criminal behaviors, especially those harmful to others, through their socialization to an ethic of care (Steffensmeier et al. 2013), citing Gilligan (1982). But their "feminine cooperative behavior," while counter-intuitive to law-breaking, often puts women in a position to allow the men in their lives to "pull them into criminal involvement;" however, a woman's ethics "can hedge against involvement in white collar crime and act as a deterrent to corporate wrongdoing" (Steffensmeier et al. 2013:452). A female's reluctance to commit such crimes remained staunch even where opportunities arose in the workplace. Only three females in their study were found to be principals in a conspiracy, two of whom were in collusion with a spouse. Over half of the women did not profit at all from their criminal involvement, or benefited very little, and most played marginal roles.

The common finding throughout these studies was that female white collar offenders are primarily motivated to offend by their inherent needs as caregivers, spouses or partners, and not to seek financial gain for their personal benefit. This unique gendered quality could be viewed as mitigating a woman's criminal intent, and is crucial to the examination of criminal justice policies governing prosecution and punishment.

Profiling the Female White Collar Offender

A number of studies using data from limited offender populations have identified characteristics common among federal white collar offenders. Pogrebin,

Poole and Regoli (1986) reviewed federal probation office files for 62 white collar defendants convicted of embezzlement, 63% of whom were females. For the sample, 77% were Caucasian, between 21 and 30 years old, with a high school diploma or GED, and had worked for their employer less than a year before arrest. Over 16% had prior misdemeanor convictions and 8% had felony convictions. The majority of the money embezzled went toward individual debt (66%) and luxury purchases (43%).

In Daly's (1989) study of white collar offenders, of which 13% were females, the overall sample was primarily Caucasian, average age of 26 (females) and 31 (males), with high school diplomas. Males were more often married with children, while women were more often not married with children. Males were more likely to be in management, and women in clerical positions. Women were more motivated by financial needs for their family than men. According to Poortinga, Lemmen and Jibson (2006), both male and female white collar offenders tended to be more educated, more likely to be employed and to have served in the military, and have higher rates of mood disorders than the comparison group of defendants charged with other types of nonviolent theft. The odds of being a white collar defendant were 4.5 times higher for whites than blacks.

Observations on Theories of White Collar Crime

The foregoing discussion clearly demonstrates that the study of white collar crime or offenders is not an exact science. Its relatively new and evolving place in crime and criminology has created much scholarly disagreement over the nature of the offenses, the nature of the offender, and whether this conduct is perceived as "criminal." Although the public may disagree, modern criminological scholars have

discounted Sutherland's (1940, 1941) identification of white collar crime as that committed by persons of the upper socioeconomic class in the course of their occupation. Many of the crimes classified today as "white collar" (1) are not committed by those of the middle class or above, and (2) are not committed as a result of the offender's employment. A reliable theory of offending is contingent upon an accepted construct of white collar crime. The lack of empirical agreement on such a construct and the inability to readily classify specific offenses as "white collar" have been the greatest impediments to the pursuit of an explanation of white collar offending and its consequences.

Most empirical studies, such as those of Piquero and associates, defined as "white collar" the crimes of credit card fraud, tax fraud, embezzlement, antitrust and securities violations. Identity theft and computer crimes have recently joined the expanding category of white collar crime. Many of these acts are committed outside the scope of the offender's employment or occupation. Daly (1989) cautioned against the use of state or federal data for embezzlement, fraud and forgery, as "[e]mbezzlement is the only one that is clearly occupationally related . . . One need not be in the white-collar world to commit embezzlement, fraud or forgery. . ." (p. 790). That warning, of course, presumed that "white collar crime" was offender-based, since only a few statutes require an employer-employee relationship as an element of the offense. According to Wheeler et al. (1982:334), "it is dangerous to infer the 'white collariness' of an offense from its statutory category alone." Steffensmeier (1989) agreed, as these same three crimes could be committed in a non-occupational setting. But it is common in federal prosecutions to charge various forms of fraud and forgery

as offenses committed in both occupational and non-occupational settings. Further difficulty arises without a theoretical construct that fully incorporates well-known gender differences in white collar offenders and offending. Virtually all statistics recorded by law enforcement, courts, probation offices and correctional agencies, including the data used in this study, rely in part upon the Uniform Crime Reports classification of "white collar crimes." Simply put, the Federal Bureau of Investigation's website describes white collar crime as "lying, cheating, and stealing" (Federal Bureau of Investigation 2013). Although difficult to measure, that phrase accurately describes the wide range of conduct that now finds itself within the scholarly classifications of white collar crime.

Research over the past two decades has magnified these weaknesses through published studies that proceeded without a construct for white collar crime. One concern is the frequent use of data from irrelevant non-offender samples. Although it is popular to advance criminological theories through data from samples of college students, that practice is not valid for the study of white collar crime. If there is one thing about white collar offending on which the academic community agrees, it is that white collar crimes, by any definition, are generally conceived and perpetrated by males and females falling outside the margins of the standard age-crime curve with motivations and opportunities very different than for most other crimes. Therefore, using data from young college students, or even general population samples with broad age ranges, is inadequate to develop a solid theory of white collar crime.

Neither Congress nor state legislatures have classified crimes based on the types of individuals most likely to commit them. If the intent was to criminalize

conduct perpetrated by those of high social status differently than those perpetrated by individuals of low socioeconomic status, the criminal statutes would be drastically different. Since other types of crimes are not so classified, this study relied on the premise that “white collar crime” is an offense-based concept.

CHAPTER 3

THEORIES OF FEMALE OFFENDING

Hirschi and Gottfredson (1987) paid little attention to whether their general theory of crime applied to females or white collar offenders, as it was alleged to apply universally. Tests over the last several decades of the general theory, as well as many other criminological theories, have been done through a gendered, feminist lens. These studies have left us with rich empirical evidence that male and female offenders are different in terms of motive, opportunity, self-control, strain, and most importantly, in the pathways they followed on the road to offending. Such research also revealed the impact of social and criminal justice policies implemented in the name of "equal justice," but with ever-increasing impunity for females. It is these discoveries that are most significant to the treatment of female white collar offenders by the criminal justice system.

The commonality among theories of white collar offending is that they are based predominantly, if not exclusively, on male samples and male experiences. Early studies of female criminality were grounded in the belief that women were driven to offend by their biological nature and their "perversion of or rebellion against their natural feminine roles" (Belknap 2007:72), citing Klein (1980). Although Sutherland's and Cressey's differential association theories were not seen by their critics as exclusively male, females were treated by them as peripheral and insignificant. Feminists believed these theories showed that relatively low crime rates for females could be the result of parental constraints that lessened their exposure to criminal others (Belknap 2007:42-43). Gottfredson and Hirschi (1990) concluded

that males' higher involvement in crime was primarily due to differences in socialization, and that "gender differences for all types of crime are established early in life and persist throughout life" (p. 147).

Feminist criminologists have argued that poverty is preferable to biology to explain female offending (Belknap 2007). Strain theories frequently ignored that "females constitute the most impoverished group of every Western society, but females commit by far the least crime" (Belknap 2007:107), citing (Faith 1993). In Agnew's (1985, 1992) revised "general strain theory," he broadened the source of strains to include an individual's race, class and gender. Broidy and Agnew (1997) found that both strain and responses to strain explained gender differences in offending. Critics led Agnew to acknowledge in 2001 that many key strains relevant to females had not been included in his tests, such as child abuse, sexual abuse and criminal victimization, which could result in stronger feelings of anger and injustice (Belknap 2007:39-41).

Acker (1992) defined "gender" as "patterned, socially produced distinctions between female and male, feminine and masculine . . . that occur in the course of participation in work organizations as well as in many other locations and relations" (p. 250). Others have argued that the criminal justice system placed "gender" as a social institution that "establishes patterns of expectations for individuals, orders the social processes of everyday life, [and] is built into the major social organizations of society" (Lorber 1994:1). "Gender" was a mechanism experienced simultaneously with race and class whereby situated social action contributed to the reproduction of social structure (Lorber 1994). Scholars generally agree that gender is the most

important criteria for organizing society and creating a system of inequalities. For example, Martin (2004) found in her study of the workplace that men and women unreflexively engaged in gendering practices and the practice of gender, creating and perpetuating the same inequalities found in society. Gendered norms and expectations are both informal and formal, the latter including those codified into formal laws and regulations that carry the prospect of punishment for bending or breaking gender rules.

Two explanations for the narrowing "gender gap" in crime have been revealed in recent literature: (1) the existence of a gendered institutional response by the criminal justice system to deviation by women from traditional gender roles, and (2) the ongoing economic marginalization of females (Daly 1989; Javdani, Sadeh and Verona 2011). However, little attention has been paid to the underlying causes of the narrowing gender gap and why more women – especially female white collar offenders – are finding themselves in the system at all. Despite increased numbers of female arrests, no reliable evidence has emerged that, since their “liberation” in the 1970s, women’s criminal behavior has changed. In fact, Steffensmeier and Schwartz (2004) offered valid explanations for recent increases in female arrests that have narrowed the gender gap for larceny, fraud and forgery: (1) "less biased" and more efficient responses by law enforcement to crime; (2) net widening and increased punishment for less serious crimes committed disproportionately by females; (3) equality and emancipation providing more desire and opportunity; (4) economic marginalization; (5) increased urban disorganization leading to weakened social controls; (6) expanded opportunities for female crimes through increased consumerism and reliance on a credit-based system; (7) reduction of available male crime partners

due to increased incarceration rates; (8) growing drug dependency; and (9) crime prevention programs targeting male offenders (p. 114).

Once convicted, it appears that the increased levels of punishment, coupled with the patriarchal standards that dominate criminal justice policy, have resulted in "bootstrapping" female offenders who are seen as having stepped out of their appropriate gender roles and committed "masculine" crimes. Javdani et al. (2011:29) found that females convicted of relatively minor offenses, and even those who received probationary sentences, were often trapped in the system's revolving door as a result of minor and technical violations that resulted in extended or new terms of imprisonment. This institutional response to female criminal behavior is itself a "structure" in which gender norms operate and impact criminal trajectories (Javdani et al. 2011:36).

In their "gendered paradigm" of female offending, Steffensmeier and Allan (1996) confirmed the ability of traditional gender-neutral theories to explain less serious forms of male and female criminality as well as gender differences in certain crime categories. However, these theories were unable to inform the ways in which differences in the lives of men and women contributed to gendered differences in criminal behavior. The four elements of the "paradigm" were that it should:

- (1) [E]xplain how the organization of gender deters or shapes delinquency by females but encourages it by males,
- (2) account for gender differences in type, frequency and context of crime,
- (3) identify how women's routes to crime (especially serious crime) may differ, and
- (4) reveal how social and biological gender differences impact offending. (Steffensmeier and Allan 1996:474).

Nine of the top ten arrest offenses for males and females in 2003 were

decisively male-dominated crimes. The only one not so classified – fraud – was gender-neutral. Interestingly, eight of the ten most common arrests for females were also the most common arrests for males – the exceptions being burglary and vandalism, which appeared on the top ten for males, and fraud and offenses against family, which appeared on the females’ top ten (Belknap 2007:100-101). While there is some statistical evidence that the gender gap is closing for less serious property crimes and possibly drug use, UCR data may not reflect changes in offending as much as changes in policies and practices disproportionately directed at women.

Feminist Theories of Offending

While responding to a lengthy history of theories of offending based on studies of male populations, Daly and Chesney-Lind (1988) defined feminist thought as that which "emphasizes a new vision of the social order in which women's experiences and ways of knowing are brought to the fore, not suppressed" (p. 498). They saw the importance of placing women at the “center of intellectual inquiry, not peripheral, invisible, or [as] appendages to men" (Daly and Chesney-Lind 1988:503-504). Simpson, Yahner and Dugan (2008:83) said it best: "Feminist scholars, in particular, question whether theories developed by males about males and based on males can account for female experiences. . ."

"Feminist criminology" emerged as research and theory that situated the study of crime and criminal justice "within a complex understanding that the social world is systematically shaped by relations of sex and gender" (Miller and Mullins [2006]2010:218). Its goal was to introduce the concept of "women's standpoint" and to reduce "gender inequality, crime and the inequitable treatment of offenders, victims

and workers, emerging from the androcentric policies and practices within 'gendered institutions'" (Miller and Mullins [2006]2010:219), citing Acker (1990). But as to crime and justice, Daly and Chesney-Lind (1988) rejected the notion that correcting the historical absence of women from theory development was simply a matter of "add women and stir."

It is indisputable that gender is the strongest predictor of crime. Men offend more than women, and commit more serious crimes than women (Flavin 2001:71). Women are more likely to be first-time offenders, and have much lower rates of recidivism (Britton 2000:54-55). The dilemma of applying male-based criminological theory to women is two-fold: Can theories that describe male offending apply to females? (the "generalizability problem"); and, Why do females commit less crime than males? (the "gender-ratio problem"). Smith and Paternoster (1987) sought to develop a gender-neutral theory of crime that omitted the sexist assumptions of female behavior to resolve the generalizability problem. Daly and Chesney-Lind (1988) suggested that the greater volume of criminal behavior by males might reflect "differential exposure to factors that precipitate deviant behavior among both males and females" (p. 516).

While not developed as a theory of offending, Carol Gilligan (1982) contributed to the explanation of gendered differences in law-breaking by revealing the female "ethic of care" through relational theory. Her work was inspired by the prior practices of omitting girls and women from theory-building research in developmental psychology – much like that within the discipline of criminology. She found fundamental gender differences in psychological and moral development

between men and women, and that “connection” was a basic human need particularly strong in women. Those gender differences presented themselves as an “ethic of care” for women, contrasted with an ethic of justice and rights in men. These two moral perspectives organized both thinking and feelings, and empowered individuals to take different kinds of action in public and private life. She observed that "women not only find themselves in a context of human relationships but also judge themselves in terms of their ability to care," while men "focus on individuation and individual achievement. . ." (Gilligan 1982:17). These observations lend support to the differences in criminal motivations between males and females found in studies of white collar offending. Gilligan (1982) suggested that the focus on women's rights transformed their moral judgments, "seasoning mercy with justice by enabling women to consider it moral to care not only for others but for themselves" (p.149). The essence of moral decision-making was the “exercise of choice and the willingness to accept responsibility for that choice," and to resolve the problem in a way that no one is harmed (Gilligan 1985:7). Women transform a moral judgment "from a consideration of the good to a choice between evils" (Gilligan 1985:31). She later distinguished between a "feminine" and a "feminist" ethic of care (Gilligan 1995).

The former she described as:

[A]n ethic of special obligations and interpersonal relationships, [and] of the relational world as that world appears within a patriarchal social order . . . separated politically and psychologically from a realm of individual autonomy and freedom which is the realm of justice and contractual obligation. (Gilligan 1995:122).

Recently, Gilligan added that the feminist ethic is "a different voice within a

patriarchal culture because it joins reason with emotion, mind with body, self with relationships, men with women, resisting the divisions that maintain a patriarchal order” (Gilligan 2011).

Gilligan (1995) surmised that the "release of women's voices" in the 1970s ended “[patriarchal] house arrest and brought the disconnection from women out into the open” (p. 124). In particular, women began publicly raising concerns about relationships with children and family, along with domestic violence, education and healthcare, placing those issues high on the political agenda. Could Gilligan's explanation that women found their voice of resistance to historical irrelevance account, in part, for the uptick in female white collar offending beginning in the 1970s and the flattening of the gender gap with respect to those types of crimes that stemmed from the feminist ethic of care?

Although social bond theory has shown that females are deterred from crime as a result of their strong bonds to family and friends (Sampson and Laub 1990), Gilligan's theory also shows how those bonds can become catalysts to offend when faced with a "choice between evils" (1985:31). Simpson (1989) agreed that Gilligan's theory explained why most women do not offend and why they score higher on measures of deterrence. However, Simpson (1989) did not address the ability of the theory to also explain a woman's motivation to offend.

Gilligan's theories have not escaped criticism. Overall, the thrust of the criticism asserted that there were no differences in moral orientation between males and females. Among the earliest critics were a series of feminist authors who claimed Gilligan's theories were “anti-feminist” based on her findings of gendered

moral differences. Walker and his colleagues (1984, 1987) comprised Gilligan's staunchest opposition, finding no sex differences in reasoning, but rather in age and the type of dilemma under consideration (i.e., real life versus hypothetical). Tronto (1987) alleged that Gilligan's findings were not gender specific, but rather related to social oppression, in that white women and minority men and women disproportionately occupied caretaking roles in society, which was likely where the ethic of care was learned. Smith (1988) also questioned whether Gilligan had sufficiently addressed the socio-historical location of women, asserting that care should gain equal standing with justice through acknowledgment of the oppressive aspects of care and sympathy when the boundaries of life are defined not only along gender lines, but also race and class. Daly (1989) challenged the notion that an alternative to men's form of criminal law and justice practices could emerge by adding women's voice or reconstituting the system along "ethic of care" lines. However, none of Gilligan's critics have gone so far as to contend that gender is not a strong component of the ethic of care – only that there may be many other contributory factors.

Despite feminists' introduction of "difference" into the public forum, MacKinnon (1987) noted that "man has become the measure of all things," and thus gender should be conceptualized within a dominance framework. She warned against the "difference" approach aimed at equal treatment for men and women, which feminists now recognize has resulted in increasingly unfavorable treatment of women, particularly in criminal justice processing. Messerschmidt (1993) believed a feminist theory of gendered crime must include the gendered nature of male behavior with a

focus on masculinity to explain why men were disproportionately involved in crime and committed different types of crime than women. Flavin (2001) noted that ignoring gender in theories of crime not only ignored how it shapes the experiences and behaviors of females, but also of males. West and Fenstermaker's (1995) approach to "doing difference" has been incorporated into feminist accounts of crime to explain differences in women's and men's offending, with crime being "a resource for accomplishing gender," and gender a "resource for accomplishing crime. . . ." (Miller and Mullins [2006]2010:224).

Unfortunately, to this day, women have yet to achieve the equality, status and pay that feminist pioneers predicted, and the increase in women's property crime (including white collar crime) over the last two decades is widely attributable to women's economic marginalization and the "feminization of poverty." Although many feminists sought full legal equality for women, they now see the negative results of getting what you ask for. The unending wars on drugs and crime in America, which have prompted increasing severity of punishment for all types of crime, have left us with federal sentencing guidelines based on an equal treatment model intended to reduce or eliminate sentencing disparity – for men. But when applied to females, these same guidelines eliminated gender and gender-related issues as sentencing factors, resulting in more severe punishment. These unintended consequences of emancipation worsened women's treatment in the criminal justice system, while men's treatment has remained relatively steady. Daly (1998) suggested that, because of the differences in how women experience society compared to men, "rather than analyze gender as a correlate of crime, one would analyze crime as a correlate of gender" (p.

88).

Feminist Pathways Theory

Although theories of female offending provided a foundation for the current study as to common characteristics expected to be found in female white collar offenders, only one theoretical approach also informed the experiences of the offender within and beyond the criminal justice system. Belknap (2007) described the common theme of feminist pathways research as "that which attempts to examine girls' and women's (and rarely, men's and boys') histories, allowing them, when possible, 'voice' to understand the link between childhood and adult events and traumas and the likelihood of subsequent offending" (p. 71). Owen (1998) identified five significant issues on the pathway to incarceration: the multiplicity of abuse, early family life, children, street life, and spiraling marginality. The current study examined how the same attributes that may have paved the feminist pathways to offending for this sample of female white collar offenders became risk factors predicting recidivism.

According to Chesney-Lind (1989), a feminist approach to delinquency meant construction of explanations of female behavior that were sensitive to its patriarchal context, and examined ways in which agencies of social control – the police, courts and prisons – acted to reinforce women's place in male society. She identified childhood sexual abuse as one of the most important types of strain and a strong risk factor for female delinquency and criminality. An important aspect of pathways theory is the impact of the intersecting systems of race, class and gender, which act as structuring forces affecting how people act, the opportunities available to them, and the way in

which their behavior is socially defined. Steffensmeier, Ulmer and Kramer (1998) observed that sentencing decisions were most punitive for defendants at the margins of race, age and gender. Generally, "gendered pathways" theory emphasizes "biographical elements, life course trajectories and developmental sequences, and . . . seeks to map the life experiences that lead women and girls to offending as well as desistance" (Miller and Mullins [2006]2010:229).

The importance of the feminist pathways perspective is evident in the face of the typical female offender: She is most often a first-time offender, young and African-American, who was raised in a dysfunctional and often violent home. She is a single mother, toeing the line between economic marginalization and poverty. She has a high school education at best, contributing to a lack of employment skills and job stability, leading to public assistance. She is a victim of abuses as a child and an adult, usually at the hand of male intimates or parents. She suffers from untreated mental and emotional problems, and is a substance abuser or addict who was likely under the influence at the time of her crime. She has lived on the streets, and likely offended at the bidding of her spouse or partner, or out of sheer financial desperation to support her family. Despite all this, she most likely committed a much less serious crime than her male counterpart, is not a danger to others, and is less likely to reoffend (Belknap 2001; Britton 2000; Chesney-Lind 1997; Daly 1992, 1998; Morash and Schram 2002; Flavin 2001). These factors may not collectively depict the public image of the female white collar offender, or the one described in the literature and the media, but many of these characteristics were present among the female white collar offenders in the current study.

Daly (1992) was one of the first to fully incorporate feminist inquiry into theories of law-breaking, justice and punishment, by identifying women's pathways to felony court, with the goal of transforming "an abstraction called 'the female defendant' into a woman with biography and set of relations to others" (p. 21). She classified female offenders in terms of their dominant characteristics as "street women," "harmed-and-harming women," "battered women," "drug-connected women," or "other" (Daly 1992:26). Regardless of the category, she observed that "the boundaries between victim and offender are often blurred in describing the pathways of girls to the street and to the penal system," an important feminist contribution to the field of criminology (Daly 1992:47-48).

A factor implicit in the pathways approach is age. The theory predicts that some females begin offending at an early age, once the abuse or dysfunction in their home forces them to the streets. However, it also explains why females may become adult-onset offenders and take a different pathway, and particularly female white collar offenders (Eggleston and Laub 2002). Simpson et al. (2008) warned that ignoring evidence of later offending when studying females "may produce incomplete or highly misleading empirical (and subsequently theoretical) conclusions" (p. 89). In their female sample of incarcerated women, 54% reached adulthood before their first offense. Their data showed more stable lifestyles for the adult offenders compared to the more youthful offenders: they were more likely to be married at the time of arrest, have fewer friends in prison, significantly fewer friends with felony convictions, and fewer lifetime arrests (Simpson et al. 2008). They had experienced fewer incidents of violence in their younger lives, and were less likely than to have

experienced sexual abuse and drug involvement and to have committed property crimes.

Because these female white collar offenders never experienced a successful intervention along their pathways to crime, those risk factors remained unresolved once they found themselves in the criminal justice system. The pathways perspective is valuable in suggesting appropriate post-conviction treatment and supervision of female offenders, particularly in terms of alternative punishment models, conditions of release, levels of supervision, and programs that address the realities of women's lives and histories. Research in this area has contributed to recent efforts by federal, state and local courts, correctional facilities, and probation offices to address recidivism by creating more effective gender-specific risk and needs assessment tools for females coming into the system.

Work on the gendered pathways of female probationers to incarceration has identified three pathways relevant to explain offending and to inform correctional interventions to prevent recidivism:

A pathway beginning with childhood victimization that contributed to historical and current forms of mental illness and substance abuse; . . . a relational pathway in which women's dysfunctional intimate relationships facilitated adult victimization, reductions in self-efficacy and current mental illness and substance abuse (informed by the work of Miller 1986, Gilligan 1982 and others); and . . . a social and human capital pathway in which women's challenges in the areas of education, family support and self-efficacy, as well as relationship dysfunction, contributed to employment/financial difficulties and subsequent imprisonment. (Salisbury and Van Voorhis 2009:541).

Later, Van Voorhis (2012:127) urged that a "key risk factor for women's

recidivism, especially in community settings, is parental stress exhibited by women who have little financial and emotional support in raising their children and who experience difficulties with child management.” The data limited the current study to examining only five significant pathways risk factors for recidivism; however, results showed they were prevalent among the sample of female white collar offenders.

Not only are incarcerated women denied the opportunity to resolve the issues they encountered on their pathways to crime, but they are further penalized within the system, often being placed on a permanent pathway to a life of crime. "Gender-neutral" risk assessments utilized by federal probation offices to guide courts to appropriate sentences and conditions of release, developed from male-centered criminological data and research, succeed in treating males and females the same. Although there is well-established empirical agreement that few women pose a risk to public safety (especially compared to males), these assessments tend to over-classify their risk and under-estimate their needs for successful rehabilitation and reintegration (Covington and Bloom 2003; Hannah-Moffat 1999).

Once incarcerated, females are often treated more harshly than males. McClellan (1994) found in her study of two female prisons that women were placed under higher levels of surveillance than males, and wardens demanded total compliance with prison rules. Females were cited more often for minor disciplinary infractions and punished for them more severely than males. Interestingly, in the sample of female probationers studied by Salisbury and Van Voorhis (2009), 75% of the women who were revoked and re-admitted to prison were the result of technical violations, and not the commission of new crimes. As Covington and Bloom (2003)

observed, the controlled environment of a prison "fosters dependence and powerlessness, which are two of the factors that lead women into the criminal justice system in the first place" (p. 10).

The pathways of the female white collar offender to the criminal justice system follow her to the day of sentencing, through incarceration, and throughout her term of supervision in the community and beyond. As anticipated, the profile revealed in this study showed characteristics similar to all female offenders, but also those representative of very low-risk offenders who came into the system with little or no prior contact with law enforcement and very little likelihood of recidivism. Both sets of factors are important to the discussion of federal sentencing reform for female white collar offenders.

CHAPTER 4

FEDERAL SENTENCING FOR WHITE COLLAR OFFENSES

After prolonged controversy over federal sentencing disparities blamed on decades of unbridled judicial discretion, the United States Sentencing Commission (“USSC”) was established under the Sentencing Reform Act of 1984 to develop sentencing guidelines to “further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation” (United States Sentencing Guidelines, Para. 1A1.2, 2012). The federal mandate was the creation of policies and practices that were consistent with the statutory factors to be considered by the court in imposing a sentence (Title 18, United States Code, Section 3553, 1984). The guidelines were to ensure “certainty and fairness” in punishment and to avoid sentencing disparities among offenders with similar criminal records convicted of similar crimes, reflecting “advancement in knowledge of human behavior as it relates to the criminal justice process” (Title 28, United States Code, Section 991, 1984). Unfortunately, the application of knowledge gained from over two decades of research in feminist theories of offending and feminist pathways thus far has been overlooked in the sentencing guidelines.

The ranges of punishment and related policies were to be premised on the seriousness of the offense and circumstances that could mitigate or aggravate its seriousness, the harm caused to the victim(s), the community's view of the gravity of the offense, public concern generated by the offense, the deterrent effect of the sentence on others, and the “current incidence of the offense in the community and in the Nation as whole” (Title 28 U.S.C., United States Code, Section 994, 1984).

Rehabilitation was not considered “an extraordinary and compelling reason” for a reduction in sentence (Title 28, United States Code, Section 994, 1984). With regard to white collar crime, public concern has always been in doubt, as has “incidence” in light of the fact that these are among the most under-reported crimes.

Congress further directed that the Commission “assure that the Guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders” (referred to as the “forbidden factors”) (Title 28, United States Code, Section 994, 1984; United States Sentencing Guidelines, Ch. 5, 2012). For example, a “disadvantaged upbringing” by the defendant was not relevant to determining whether a departure or less severe punishment was warranted (United States Sentencing Guidelines, Ch. 5, 2012). In addition, the Guidelines were to “reflect the general inappropriateness of considering [an offender’s] education, vocational skills, employment record, family ties and responsibilities, and community ties” in fashioning a sentence (referred to as the “discouraged factors”) (Title 28, United States Code, Section 994, 1984). The United States Sentencing Guidelines (hereafter the “Guidelines”) became effective in November 1987. Judges were required to sentence within the Guidelines’ range of punishment as calculated for a specific defendant.

The shift in sentencing priorities from rehabilitation to retribution was swift and certain. Pursuant to Congress’ directives, punishment decisions could no longer focus on rehabilitation or other offender needs, and in no way on a female offender’s special needs. For instance, the Guidelines specifically required that reduced sentences or alternatives to incarceration for the loss of caretaking or financial support

from defendant's absence in prison be based on a "substantial, direct, and specific loss of essential caretaking, or essential financial support, to defendant's family." Absence of a parent alone was not sufficient to excuse a term of imprisonment (United States Sentencing Guidelines, Ch. 5, 2012).

A repeat offender was considered more culpable than a first offender, and thus deserving of harsher punishment (United States Sentencing Guidelines, Ch. 4, 2012). A "first offender" was considered the offender with the lowest risk of recidivism. Congress directed that it was appropriate to impose a sentence other than imprisonment in cases where a first offender had not been convicted of a crime of violence or otherwise serious offense (Title 28, United States Code, Section 994(j), 1984). However, the Commission's intent with respect to white collar offenders was to correct the "inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement" that were being sentenced to straight probationary terms, by classifying as "serious" a number of crimes previously punished with straight probation and requiring "at least a short period of prison" for deterrence value (United States Sentencing Guidelines, Para. 1A1.4(d), 2012). Although studies had long acknowledged that the majority of female white collar offenders were first offenders with very low risk of danger to the community or reoffending, most would now be sentenced to prison, not probation (Belknap 2001, 2007; Britton 2000; Daly 1989; Flavin 2001; Steffensmeier et al. 2013; Weisburd et al. 2006) .

The Commission added a policy statement to the Guidelines in November 2000 regarding the punishment of "aberrant behavior," directing that a sentence lower

than the computed Guidelines range could be warranted in an “extraordinary” case where the defendant’s criminal behavior was aberrant, did not result in serious bodily injury or death, and did not involve use of a firearm or a serious drug trafficking offense (United States Sentencing Guidelines, Para. 5K2.20, 2012). To be eligible for a downward departure for aberrant behavior, the defendant could not have more than one criminal history point, a prior federal or state felony conviction, or any other significant prior criminal behavior. Unlike with other offenders, the court was permitted to consider the “aberrant” defendant's mental and emotional conditions, employment record, record of prior good works, motivation for committing the offense, and efforts to mitigate the effects of the offense. "Aberrant behavior" was defined as "a single occurrence or single criminal transaction that (A) was committed without significant planning; (B) was of limited duration; and (C) represented a marked deviation by the defendant from an otherwise law-abiding life" (United States Sentencing Guidelines, Amend. 603, Application Notes 1 and 2, 2003). Scholars had long known that most female white collar offenders were one-time offenders, usually compelled to offend out of financial desperation from a duty of care. While most fit squarely within the “aberrant behavior” criteria, very few were sentenced under this policy. In fact, during fiscal year 2001, when this option was included in the Guidelines, only 8% of downward departures awarded to all federal offenders were based on aberrant behavior (United States Sentencing Commission 2003).

In 2002, the noose tightened again for federal white collar offenders with passage of the Sarbanes-Oxley Act, the legislative response to financial scandals that began in the late 1990s. Penalties for mail and wire fraud, the two most common

white collar offenses charged federally for both occupational and non-occupational crimes, increased from a statutory maximum of five years' imprisonment to 20 years. Securities fraud became a maximum 25-year penalty, and other white collar offenses such as obstruction of justice, perjury, and certain false statements were punished more harshly. In November 2003, the Commission amended the Guidelines to comply with the Sarbanes-Oxley Act, increasing the severity of punishment and eliminating the option for straight probation except for offenders with the lowest criminal history scores and whose crimes resulted in losses under \$10,000. For those fortunate enough to still receive a sentence of probation only, the court could impose special conditions related to the offense or the offender to be satisfied during that term. The same option for conditions was available for defendants ordered to serve a term of supervised release following incarceration. These conditions might include employment restrictions (for example, not working in a bank for a defendant convicted of embezzlement), education requirements, counseling, substance abuse or mental health treatment, financial responsibility training, and so forth, aimed at protecting the community while contributing to the rehabilitation of the offender (United States Sentencing Guidelines, Para. 5B1.3(b), 2012).

In 2005, the Supreme Court issued its opinion in *United States v. Booker*, rendering the previously mandatory sentences under the Guidelines "effectively advisory" (p. 244). The Court eliminated the ability of a judge to consider any fact, other than a prior conviction, that would increase a sentence which was not admitted by the defendant or proven to a jury beyond a reasonable doubt (*United States v. Booker*:244). Judges were no longer required to sentence a defendant within the

Guidelines range, and were given discretion to fashion a reasonable sentence using the applicable statutory factors, treating the Guidelines calculation as only advisory (United States Sentencing Commission, *Booker* Report, 2012:26-27).

The Supreme Court did not offer guidance for post-*Booker* sentencing until 2007 in its decision in *Gall v. United States*. There, the Court established a three-step process: the sentencing judge was to determine the range under the Guidelines calculation, decide whether the defendant was eligible for any type of departure, and then to consider all of the factors in Title 18, United States Code, Section 3553(a), to determine the sentence (*Gall v. United States*:28). In the *Gall* decision, the Supreme Court urged judges to consider all factors in making their sentencing decision, including the history and characteristics of the defendant. However, this philosophy flew in the face of the Guidelines' prohibition against using the "forbidden" and "discouraged" factors in sentencing -- an issue the Court failed to address in the *Booker* and *Gall* decisions, and which remains unresolved.

The participants in the data used for this study began a term of federal probation or supervised release following incarceration between October 1, 2004 and September 30, 2007; therefore, all were sentenced prior to the *Booker* decision, and most prior to implementation of Guidelines related to passage of the Sarbanes-Oxley Act, when sentencing within the calculated Guidelines range was still mandatory. Recent studies by the Commission have shown that, after *Booker*, judges were more inclined to sentence outside the "advisory" Guidelines range (sometimes below that range for white collar defendants), and to more overtly consider offender characteristics in doing so (United States Sentencing Commission, *Booker* Report,

Part F, 2012:8). The *Booker* and *Gall* decisions diminished Congress' efforts to enforce harsher punishment of white collar crime. Nevertheless, beginning in 2005 after the *Booker* decision through fiscal year 2009, over 72% of all federal fraud defendants were sentenced to an average prison term of 28 months (United States Sentencing Commission 2010). As late as fiscal year 2013, long after judicial discretion in sentencing had been restored, only 15% of male and female federal fraud offenders were sentenced to straight probation during that year (United States Sentencing Commission 2013a). Fraud offenders with the lowest criminal history scores were still sentenced to an average of 33 months in prison (even higher than the 2005 to 2009 period), and nearly 50% who were eligible for non-prison sentences based on low sentencing guideline ranges and other factors received a term of imprisonment (United States Sentencing Commission 2013a). Despite the freedom bestowed by the *Booker* decision for judges to deviate from the Guidelines, during 2013, over 51% of all federal offenders were sentenced within their computed guideline range. However, for fraud, this rate dropped to 47% (United States Sentencing Commission 2013a). For all federal sentences imposed during 2013 that were below the Guidelines range, sentencing courts attributed only 3% to “family ties and responsibilities” and only 1% to “low likelihood of recidivism/not a risk to community” (United States Sentencing Commission 2013a).

During Commission Regional Hearings in 2009, many expressed support for alternatives to incarceration for low-level offenders as a necessary substitute for costly confinement, to provide offenders the opportunity for diversion from prison or reduced time in prison, and to enter programs to provide the life skills and treatment

necessary for becoming law-abiding, productive members of society (United States Sentencing Commission 2009). Others at the Regional Hearings suggested that alternatives focused on reducing recidivism should be on both the "front end" and "back end" of the federal punishment stage. A number of witnesses complained that the fraud Guidelines produced sentences that were too high and too complicated. A Commission survey of judges in 2010 found that many believed fraud and embezzlement were appropriate offenses for punishment by straight probation, combined probation and community or home confinement, or split sentences of imprisonment and community or home confinement (United States Sentencing Commission, *Booker* Report, Part F, 2012:59).

Prior to the Guidelines, judges often "traded" fines for prison time, especially for wealthier defendants (Waldfoegel 1994). This option was virtually eliminated by the Guidelines as a sole sanction, even for low risk white collar offenders. An examination of Guidelines sentences for white collar offenses imposed prior to 2001 found that prison terms were lower for those ordered to pay a fine (Schanzenbach and Yaeger 2006). But fines were dependent on the defendant's ability to pay, often disfavoring females. They still found that being female, having more dependents, a higher education level, being older, a United States citizen, and white were all associated with receiving lower terms of incarceration (Schanzenbach and Yaeger 2006:781). However, prison sentences for male white collar offenders were only three to six months longer than for females. They suggested a more creative system for determining fines and the abilities of offenders to pay fines, such as making fines proportionate to an offender's ability to pay and offering payment options, to forgive

prison time in a more equitable fashion (Schanzenbach and Yaeger 2006:792). One obvious advantage to such a plan is that the burden of a substantial fine within a female white collar offender's means could motivate her toward accepting responsibility and demonstrating accountability to her victim, engaging in a way of life that facilitates repayment of that debt, evincing a greater sense of remorse, and facilitating her rehabilitation toward finding legal and moral pathways to a personally and financially sound existence for herself and those in her care.

The popular contention that a social movement against white collar crime in recent decades has led to harsher punishment has been explored. In the past, many assumed these offenders were protected from punitive sanctions by a "status shield," with some judges believing that the "process is the punishment," and that prison was not appropriate and would impose unnecessary loss of status on these low-risk offenders. Others contended that factors such as the complexity of the cases, diversity of victims, and the special knowledge necessary to investigate and prosecute white collar cases contributed to fewer prosecutions and lower punishment. Yet others saw that public opinion against prosecution and punishment of such crimes had a negative impact on the criminal justice system's pursuit of harsher sanctions (Van Slyke and Bales 2012:221).

Using offenders who fell within the Edelhertz (1970) definition of white collar crime for fraud, bribery and embezzlement, and those convicted of street crimes, Van Slyke and Bales (2012) analyzed sentencing outcomes for a large sample of state felony offenders. Structured sentencing, similar to the federal Guidelines, had been used with those in the sample. Females represented 51% of white collar offenders

(compared to only 30% of street offenders). Only 16% of white collar offenders received terms of incarceration, compared to 40% of street offenders. Those required to pay restitution (i.e., 14% of white collar offenders versus only 7% of street offenders) were significantly less likely to receive a prison term, and white collar offenders generally were 33% less likely to receive a prison or jail term than street offenders (Van Slyke and Bales 2012:232). "High status" white collar offenders (such as those charged with Medicaid fraud) were 99% less likely to be incarcerated, supporting the presence of a "status shield" in punishment. The authors found support for their proposition that the Enron scandal had a punitive impact on sentencing of white collar offenders, as those sentenced after the Enron publicity were 31% more likely to receive a term of imprisonment. Sentences for street offenders were unaffected, and the impact of restitution on white collar and street offenders was nearly identical on the likelihood of incarceration (Van Slyke and Bales 2012: 234-235). Recent trends toward "evidence-based" practices are improving federal supervision after incarceration by inserting gender-specific risks and needs into assessment tools, and refocusing efforts on rehabilitation and reintegration. However, these reforms were not in place for the sample of female white collar offenders who were the subject of the current study.

Recidivism and the First-Time Offender

The Sentencing Commission conducted a study of recidivism by first offenders who had been sentenced during fiscal year 1992, based on the premise that "first offenders are less culpable and less likely to reoffend" and deserving of reduced punishment (United States Sentencing Commission 2004:1). It was Congress' intent

that the Guidelines allow punishment other than imprisonment for first offenders. Based on empirical evidence available at the time, this goal was surely aimed at first-time white collar offenders, especially females. However, over time, the definition of "first offender" grew more restrictive, and Guidelines sentencing more punitive.

In the Sentencing Commission's recidivism study, three prospective "first offender" groups were examined: (1) those with no arrests and no convictions ("Group A"), (2) those with prior arrests but no convictions ("Group B"), or (3) those with arrests but only convictions for minor offenses that did not add punishment under the Guidelines ("Group C") (United States Sentencing Commission 2004). The sample consisted of offenders sentenced under the federal Guidelines in fiscal year 1992, approximately 20% of whom were females. In the sample, 75% of all females compared to only 44% of all males had criminal history calculations under the Guidelines of "zero" points. Of those, 74% of females compared to 53% of males fell into "Group A" with no prior criminal history at all, 15% of females and 18% of males fell into "Group B", and 2% of females and 3% of males fell into "Group C."

Over 35% of Group A was age 41 or older, and the proportion of offenders over 50 in those three groups represented between 8.6% and 12.5% of the total sample. Illegal drug use was lowest among these groups in the year prior to arrest, but still exceeded 28%, and was lowest for Group A at 21%. Over 80% of the offenders in these three groups were employed prior to arrest. Approximately 48% of Group A was married, over 70% had graduated from high school, and 33% had some college education. Nearly 60% of all "zero" point offenders had financial

dependents, compared to 44% of those with higher risk. Over 25% of Group A offenders were sentenced for "fraud," along with 15% in each of Group B and Group C (United States Sentencing Commission 2004).

Although these groups encompassed the lowest risk federal offenders, most still received terms of imprisonment, even during a time when straight probation was an option. For those in Group A with no prior arrests or convictions, over 41% were sentenced to a straight prison term, compared to 30% who received only a term of probation. For Group B, 67% received straight prison, and 52% in Group C. For those falling within Group A who received a term of incarceration, 12% received a sentence between 1 and 11 months, 10% received 12-23 months, 12% received 24-59 months, and nearly 13% received 60 months or more. More offenders in Group C were sentenced to no prison term than Group B (45% versus 29%), and more offenders in Group B received terms of 60 months or more in prison than those in Group C (27% versus 11%) (United States Sentencing Commission 2004).

In a separate analysis, the Commission used a stratified random sample of the recidivism data from the total population to examine recidivism during the two years after release. "Recidivism" was defined as one of three events: reconviction for a new offense, rearrest with no information as to charges or disposition available, or revocation of probation or supervised release. The average recidivism rate for all "zero" criminal history point offenders in the random sample was 12%, compared to 23% for those with one point, and 37% for those with two points or more. Of those, Group A offenders experienced a very low 7% recidivism rate, compared to 17% for Group B and 9% for Group C. The results showed that arrests (regardless of alleged

offense), independent of convictions, predicted the risk of recidivism (United States Sentencing Commission 2004).

Overall, the Commission study found that Group A offenders with no record of criminal justice contact prior to the instant offense most strongly met the conceptual definition of the “first offender” (United States Sentencing Commission 2004). The findings from the study were critical to formalizing “first offender” treatment under the Guidelines and implementing appropriate sentencing alternatives to incarceration. However, to date, no first-offender Guideline has been implemented. The Sentencing Commission’s recidivism study completed in 2004 attributed this omission to “unresolved policy and legal issues such as accuracy of prior arrest reporting or availability of prior court disposition data” (United States Sentencing Commission 2004:1). Apparently these “issues” have been allowed to languish unresolved.

It was not until 2010 that the Guidelines recognized the “increased interest in alternatives to incarceration by all three branches of government and renewed public debate about the size of the federal prison population and the need for greater availability of alternatives to incarceration for certain nonviolent first offenders (United States Sentencing Guidelines 2010). The amendment allowed consideration of alternatives for those offenders with slightly higher risk levels who were previously required to serve at least half of their punishment in prison. The same alternatives reserved for the lowest-level offenders became an option, such as intermittent confinement, community confinement, or home detention, if it was “appropriate to accomplish a specific treatment purpose.” However, these alternatives were only to be used where the defendant was a substance abuser or suffered from a significant

mental illness, and the crime was related to the treatment problem to be addressed. Once again, female white collar offenders – the lowest risk population – were excluded from an otherwise progressive break-through in the retributive world of federal crime and punishment.

Female Risk Factors for Recidivism

With the majority of female offenders being single mothers who were living with their children prior to arrest, the stress of separation and concern for the welfare of their children is a significant determinant in the offender's success or failure while incarcerated (Covington 1998b:9). According to Coll et al. (1998), stress for mothers, exacerbated by the lack of contact, creates a "resistance for survival" that results in behaviors such as "negativism, manipulation, rule-breaking, and fighting," all of which are risk factors for revocation of probation or supervision, or reoffending (Covington 1998b:10). This source of stress is much more prevalent with women: Nearly 90% of incarcerated fathers reported that the other parent cared for their children while they were imprisoned, while in only 20 to 30% of cases did children's fathers act as the primary caregiver while the mother was incarcerated. Therefore, children with mothers in prison are five times more likely to be placed in foster care than those with fathers in prison (Sharp et al. 1999).

In 1997, with the passage of the federal Adoption and Safe Families Act, states were allowed to terminate parental rights if a child was in foster care or received kin foster care payments for at least 15 out of 22 consecutive months. This sounded the relational death knell for incarcerated mothers without others to care for their children. Belknap (2007) noted that females were more amenable to alternatives to prison and

"more willing to endure them for longer periods than were incarcerated men, particularly when they are primary caregivers" (p. 201). Furthermore, the removal of a parent due to incarceration accounted for 13 to 29% of all juvenile delinquency, equating to 3 to 6% of total crime (Pritikin 2008:1082). Whether male or female, studies show that "the single best predictor of successful release from prison is whether the former inmate has a family relationship to which he [or she] can return" (Pritikin 2008:1055), citing Maldonado (2006).

In a follow-up study of female prisoners released in 1994 and tracked for three years, Deschenes, Owen and Crow (2006) found that females had lower rates of recidivism compared to the full sample of males and females across all four measures: rearrest, reconviction, resentenced to prison, and returned to prison. The most common predictors of recidivism for the female sample were the number of prior arrests and younger age at release from prison. For the sample of female white collar offenders used in the current study, these risk factors should be minimal. In a similar study, Stuart and Brice-Baker (2004) found the same variables significant to recidivism, along with offense type, number of arrests while under community supervision, age of first imprisonment, and positive attitudes toward release.

Deschenes et al. (2006) found that women were less likely to have a prior conviction or to have served a prior prison sentence, were somewhat older at release, were much less likely to return to prison regardless of the offense, and arrest rates before and after incarceration were highest for property offenders. The first year after release from prison was the highest risk for rearrest, with nearly 35% of the female sample falling into this category. By the end of three years, 44% of all females had been

reconvicted. For females with only one arrest, 21% were rearrested within three years, compared to 51% for those with three prior arrests. Most importantly, 43% of all females experienced no rearrest after release. The five most significant predictors of rearrest were the number of prior arrests, age at release, being African-American, length of sentence served, and being incarcerated for a drug offense (Deschenes et al. 2006). The Deschenes study showed that the non-violent crimes women commit both before and after prison can be conceptualized as survival crimes tied to economic and emotional struggles. These results indicated a significantly lower risk to public safety by female offenders. Sadly, the greatest risk was reincarceration of the female offender for lower-level crimes.

A study of 156 female inmates found that after a six-month period of incarceration, serious prison misconducts were significantly associated with child abuse, self-efficacy, dysfunctional relationships and mental health (Salisbury, Van Voorhis and Spiropoulos 2009). As to community recidivism, such as rearrest or technical violations of conditions of release, the significant risk factors for the same group upon release were self-efficacy and adult abuse, as well as parental stress in raising children with limited financial and emotional support (Van Voorhis et al. 2010). Recidivism for women in the community was reduced by having educational and financial assets (Salisbury, Van Voorhis and Wright 2006).

Punishing Female White Collar Offenders

Federal sentencing goals have changed dramatically over the last half century, driven by changes in public opinion on society's role in dealing with crime and punishment. In 1949, Supreme Court Justice Black stated in his majority opinion in

Williams v. New York that "retribution is no longer the dominant objective of the criminal law. . . Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence" (p. 248). He continued:

A prevalent modern philosophy of penology [is] that the punishment should fit the offender and not merely the crime. The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. (*Williams v. New York*: 247-248).

He further urged that an appropriate sentence was dependent on the judge being fully informed of the defendant's life and characteristics.

Less than 40 years later, disparities in sentences for like crimes and for offenders with similar criminal histories led to the spirit of "equal justice" and creation of the federal sentencing Guidelines, leaving very little discretion to judges. Congress' primary goal was the "elimination of unwarranted sentencing disparity" in favor of "just punishment" (i.e., just deserts) and "crime control" (i.e., deterrence and incapacitation) (Nagel and Johnson 1994:205). The period alluded to by Justice Black was soon to become only a memory, as retribution returned as the "dominant objective" of the law, and offenders the last priority. As sex and characteristics like "family and community ties" were excluded as factors in sentencing, women began receiving harsher punishments – based on the male standard – without concern for whether sentencing disparity existed for female offenders, or whether harsher punishment was even necessary to accomplish the goals of sentencing for females. Chivalry was effectively dead. The focus was on the crime – not the offender.

The question Congress and the Sentencing Commission did not fully answer in

seeking to eliminate sentencing disparity for like crimes was, "What offenses are 'like'?" (Daly 1994:4). This issue of "likeness" was identified by Daly (1994) in her study of punishment of male and female offenders, where she found a gap with respect to the crime of larceny, as a result of a definitional mismatch between the statutory crime of conviction and the actions of the defendants. With respect to white collar crimes, the question of "likeness" cannot be answered, as there is little agreement on what constitutes a white collar crime. Equally important to the current study: Are the same white collar offenses "like" crimes for males and females? The empirical answer is "no" in terms of motive and intent, as females are most often motivated by relational crises, while men are most often motivated by greed (Daly 1989; Klenowski et al. 2011; Rothman and Gandossy 1982; Steffensmeier et al. 2013; Zietz 1981).

Daly (1994:87) further asked, "What amount of difference in punishment is sufficient to suggest a disparity that troubles us?" And, more importantly, what created that difference? Zimring (1981) argued, "We lack the capacity to define into formal law the nuances of situation, intent, and social harm that condition the seriousness of particular acts" (p. 331). Congress did not mandate that the Guidelines address disparity in sentencing between male and female offenders. In fact, that concern apparently never surfaced before or during the reform process. Generally, researchers (and probably most members of the public) base the seriousness of a crime on its harm. In terms of white collar crime, it is generally considered "serious" if it involved a misuse of a position of trust, targeted vulnerable victims, created devastating financial losses or destruction of property, or endangered life or health. But knowing the nature of gendered differences in the pathways to conviction, and the lack of attention paid to

those factors in sentencing, how can we accept the reasonableness of sentences for "like" crimes imposed on females compared to males? Do we perceive equal seriousness in the female embezzler motivated by financial need to pay for medical treatment for a dying child or parent, and the male embezzler motivated by greed?

The instinct that special treatment for women should have been contemplated in this new "equal treatment" punishment scheme "undermines the strong principles of justice and equity that animate contemporary notions of blameworthiness and proportionality" (Nagel and Johnson 1994:208). Granted, many feminists criticized the chivalrous treatment afforded women during the era of rehabilitation as a patriarchal remnant. Experience has shown, however, that even prior to the *Booker* opinion, judges continued to show leniency toward females in fashioning "equal" sentences, though the grounds for doing so were not always clear (Nagel and Johnson 1994:224). Prior to "equality" through sentencing reform, nearly two-thirds of women convicted of felonies were granted probation. By 1991, just seven years after the Guidelines were implemented, only 28% received probation (Covington and Bloom 2003). Daly (1994) found that even controlling for offense severity of the crimes of conviction did not account for these sentencing disparities. Gender differences were only found in the composition of offenses, victim-offender relations, and roles in the offense. What punitive sentencing outcomes, if any, were the result of the judge viewing the crime as a "nontraditional" female crime in which the offender stepped out of her gender role, thus warranting harsher punishment? Or what was the impact of a female offender's formal and informal social control prior to arrest? (Simpson 1989). These factors are inestimable.

In pre-Guidelines sentencing of white collar offenders, federal judges considered harm, blameworthiness and consequence (Wheeler et al. 1988). In particular, for male defendants, they weighed the need for general deterrence of white collar crime against the social costs of a prison term on their family and community. By contrast, punishment justifications for females were based on retribution and specific deterrence of that defendant. Judges found women more "reformable" than men, demanding less serious punishment. Incarceration was more common where the female had a prior history of arrests and convictions (Daly 1994). Steffensmeier (1983) suggested that certain gender differences may warrant disparity in punishment, such as the extent of their criminal involvement and the danger they pose to society. However, only when females are used as the referent group can true disparity be eliminated in sentencing female offenders (Daly 1994).

Theories of punishment, like theories of offending, have developed from research on male offenders and their successes and failures in recidivism and rehabilitation. However, men generally receive harsher punishment than females because they commit more serious crimes and have longer histories of offending. On the other hand, a number of studies have shown that females receive less severe punishment because they generally commit less serious crimes and are more amenable to rehabilitation. Leniency in sentencing is particularly prevalent when the offender is a primary caregiver to her dependent children (Belknap 2007; Sharp and Marcus-Mendoza 2001). Overall, both men and women who lived with a child prior to arrest were less likely to be incarcerated, but females who had another family member to care for her children were more likely to receive prison time (Belknap

2007), citing Flavin (2001). Females who stepped outside their gender-role stereotype (i.e., being married, unemployed, and caring for children), were seen as aggressive or committing "masculine" crimes, and less likely to receive leniency at any stage of the criminal justice process (Belknap 2007).

Recent trends toward equal justice in punishment have resulted in yet another form of oppression for female offenders: criminal justice "marginalization." Rather than acknowledging the gendered nature of offending, the "new paradigmatic woman of criminal justice discourse is the 'predatory, rational, calculating female criminal, the violent gang girl, or the irresponsible, and out of control bad mother/child abuser' who justifies the surge of punitiveness in incarceration rates" (Failing 2005:104), citing Snider (2003). This certainly does not describe the female white collar offender indicated by three decades of scholarly work. But with this attitude toward female offenders, the female who has traversed a difficult path to conviction can expect yet another stage in that process to ignore her pleas (often silent) for help.

Long-Term Impact of Incarceration on Female Offenders

The boom in federal female prisoners since the 1990s has brought uniformity with male prisons in the operation of female prison facilities, resulting in what Belknap (2001:163) calls "institutionalized sexism." There are fewer female than male prisons; they are in isolated locations, remote from friends and families, making visitation difficult if not impossible; and the small numbers of inmates are used to justify the lack of meaningful educational and vocational programs, as well as the minimal number of treatment programs available to address the issues that brought women to the point of incarceration (Belknap 2007). The assumption is that "female

prisoners can simply fit into male prisoners' building structures and programs" (Belknap 2007:189). Carlen and Tchaikovsky (1985) described women's prisons as intending to "discipline, infantilize, feminize, medicalize, and domesticize" (Belknap 2007:190).

Many believe that white collar offenders are particularly affected by punishment, and that effects of prosecution and conviction may be even greater punishment than incarceration due to the embarrassment and loss of social standing in the community (Mason 2007:24-25). White collar offenders were more apt to conform to institutional rules to reestablish their pre-conviction identity as moral citizens. (Benson and Cullen 1988). It is also well-established that placing low-risk offenders with high-risk offenders in a prison setting increases the risk of failure. This may be the result of internalizing the norms of the prison's antisocial subculture and strengthening deviant bonds, or the concurrent weakening of social bonds with family and community as a result of isolation (Pritikin 2008:1055).

In a recent in-depth study of the impact of imprisonment on recidivism, Bales and Piquero (2012) compared recidivism outcomes between offenders who had served terms of incarceration and those who had been given non-custodial sanctions through a diversion program. They examined a large sample of state offenders who were sentenced under guidelines similar to the federal structure to analyze the issue using three different statistical methods, including a regression-based model as in the current study. They applied the five control variables that Nagin, Cullen and Jonson (2009) found to be necessary in addressing the relationship between incarceration and reoffending: sex, race, age, current offense, and prior record. In addition, they

added a control variable for the “sentencing guideline recommendation” based on whether the guideline range resulted in a recommended prison sentence. Similar findings resulted from the three analyses. In particular, the logistic regression analyses found differences between the two offender groups that also predicted the imposition of a sentence of incarceration; however, prison was found to have a criminogenic effect on recidivism, with those offenders being significantly more likely to reoffend (Bales and Piquero 2012:97). All three methods also produced findings that the effects of prison on recidivism were reduced as the number of control variables increased. Although neither female offenders nor white collar crime were the focus of the study, it was informative to the present research in both design and results.

Continuous reincarceration, often the consequence of minor technical violations, leads to more released offenders who suffer economic barriers and “political disabilities,” resulting in “more hard-to-employ, disaffected persons who may be incentivized to revert to criminal behavior” (Pritikin 2008:1089-90). Denial of public assistance and public housing as a result of criminal convictions particularly impacts female offenders who are single mothers without outside sources for support. But males and females alike suffer the long-term impact of disclosing their criminal records to potential employers, losing professional licensing required in many white collar positions, or being disqualified from obtaining student loans or small business loans (Pritikin 2008:1064). The personal stigma of being identified as someone worthy of isolation from society through imprisonment can also compromise an offender’s value as a person, which is a particularly negative risk for females (Pritikin

2008:1100). Overall, Pritikin (2008) found that prison increased crime overall by 7%, but only reduced crime (mostly minor crime) by 15%.

One of the major goals of punishment – general deterrence – may be achieved by making public examples of incarcerated female white collar offenders; however, achieving the goal of specific deterrence for those offenders may be lost inside the prison walls. As Clear (1996) points out, "It is not the actual brutality of prison life that deters, it is imagining the prison experience . . ." (Pritikin 2008:1066).

Gender-Responsive Treatment and Alternatives to Incarceration

An understanding of relational theory is important to introducing gender-responsiveness into the criminal justice system based on the realities of women's lives (Covington 1998a, 1998b). Covington suggested its application could avoid recreating the same torrid pathways that brought women to the point of offending by identifying experiences that most affect women's abilities to function successfully in the system and beyond. Salisbury and Van Voorhis (2009) observed "empirical support of distinct recidivistic pathways for women certainly has widespread implications, particularly in its potential to inform the paradigm shift currently underway within the field of corrections, which is an attempt to merge the areas of evidence-based practice and gender-responsive principles" (p.104). They urged that gendered pathways were vital to informing early interventions.

As early as 1995, the American Correctional Association Policy Statement suggested "women offenders should receive opportunities, programs, and services that are equivalent, but not identical, to those available to male offenders, . . . and facilitate

the maintenance and strengthening of family ties, particularly between parents and children" (p. 2). The following guidelines were to be a blueprint for management, supervision and treatment of female offenders: (1) acknowledge that gender makes a difference; (2) create an environment based on safety, respect and dignity; (3) address substance abuse, trauma, and mental health issues through comprehensive, integrated and culturally relevant services and appropriate supervision; (4) provide women with opportunities to improve their socioeconomic conditions; and (5) establish a system of comprehensive and collaborative community services (Bloom, Owen and Covington 2003:3-5). The restorative justice model described by Failing (2005) met these criteria as discussed below, but has never been formally introduced into the federal sentencing structure.

Belknap, Dunn and Holsinger (1997) recognized that in gender-specific programming, "equality does not mean 'sameness,'" but rather "providing opportunities that mean the same to each gender" (p. 23). They identified particular needs as crucial to programming for women, such as acknowledging the female perspective, providing positive female role models, respecting female development, empowering women to reach their full potential, and "work[ing] to change established attitudes that prevent or discourage young women from recognizing their potential" (Covington 1998b:6), citing Belknap et al. (1997).

Success or failure for female offenders with children is often dependent on their ability to maintain contact with them, and more importantly, to remain in their role as caregiver. Geographic distance of the correctional facility from the offender's family, and the ability (or unwillingness) of the children's designated caretaker to

travel for visitation, directly impact the offender's ability to succeed in the system. However, there are only 14 federal women's correctional facilities that incarcerate the general population, and by example, the closest facility to Oklahoma City is in Bryan, Texas, nearly 400 miles away (Bureau of Prisons 2013).

When prison is deemed necessary, accommodating gendered needs can increase the rate of successful rehabilitation and reintegration. As Belknap (2007) points out, "It is ironic that prisons have unabashedly programmed female offenders into their 'proper' gender roles as wives and mothers, but simultaneously make few or no provisions for them to maintain contact with even their youngest children" (p. 205). The cycle of crime is further stoked by the impact of a parent's incarceration on her children. Those children have been found to experience higher rates of aggression, depression, anxiety, running away, bad school performance, dropping out, substance abuse, and a substantially higher risk of becoming criminally involved and going to prison (Belknap 2007; Covington 1998a; Sharp and Marcus-Mendoza 2001). Belknap (2007) recommended that prisons should not only make visitation with children a priority, but also "provide alternative housing for the majority of women prisoners who are nonviolent, nonserious offenders with dependent children" (p. 469). She also believed it should be the correctional system's obligation to assist in finding appropriate childcare or temporary custody alternatives for children of incarcerated mothers, if possible within the prison structure. Several programs have been successful in alleviating the issues of parental stress for female offenders upon release from custody (Sharp 2014).

The National Resource Center on Justice Involved Women recently identified

ten important issues relative to the criminal justice response to female offenders.

Many already have been discussed in detail, herein, but are worthy of summary here:

(1) Women are a fast-growing criminal justice population, yet they pose a lower public safety risk than men; (2) women follow unique pathways into crime and present risk and need factors that signal different intervention needs; (3) women's engagement in criminal behavior is often related to their relationships, connections, and disconnections with others; (4) traditional criminal justice policies and practices have largely been developed through the lens of managing men, not women; (5) justice involved women often report histories of sexual victimization and trauma, and they continue to be vulnerable to such victimization within correctional settings; (6) traditional prison classification systems tend to result in unreliable custody designations for incarcerated women [as a result of classification tools generally normed on male offenders lacking factors linked to misconduct, prison adjustment and recidivism among women]; (7) gender responsive assessment tools can enhance case management efforts; (8) women are more likely to respond favorably when criminal justice staff adhere to evidence-based, gender responsive principles; (9) incarceration and reentry are particularly challenging for justice involved mothers of minor children; and (10) the costs of overly involving women in the criminal justice system are high. (Ney, Ramirez and Van Dieten 2012).

Each of these factors is fundamental in designing effective gender-responsive means to reach the ends of justice. Although electronic monitoring in lieu of incarceration offers a viable alternative to allow female offenders to care for their children while serving their punishment, one study found that women with monitors experienced additional stress from their male partners' criticism that they could not fulfill what males perceived to be the female's gender-role "duties," such as transporting their children, going to the grocery store, and running errands, and that

males were forced into assuming these duties. The problem of house restriction was also an issue for single mothers who had no one else to perform those duties (Belknap 2007:471-72).

Wraparound services that assisted women in obtaining access to community resources by enhancing their strengths, building relationships, and targeting self-efficacy issues have been recommended by experts (Bloom et al. 2003). Deschenes et al. (2006) suggested reentry programs focused on delivery of treatment and services rather than surveillance to protect the community, and that the gendered component of risk be incorporated into risk assessment instruments. Limited specialization and lack of correlation between the offense of conviction and recidivism offenses suggest unwarranted reliance on risk assessments that heavily weight the instant offense as a predictive factor. The fact that the highest risk for rearrest occurs in the first year after release demonstrates the urgency in targeting the primary pathways to crime for females, including substance abuse, mental health treatment, vocational and educational training, rebuilding social capital, and offering parenting support and domestic violence programs, all of which are known to reinforce the elements of a woman's "ethic of care" (Deschenes et al. 2006).

Furthermore, relational theory suggests that successful reintegration is dependent on a "continuum of care" to reconnect women to their community (Covington 1998a). Covington (1998a) recommended offering community-based programs within the correctional facility prior to release, and adopting principles of the restorative justice model to reduce the risk of recidivism. She also favored replacing current mandatory sentencing schemes with treatment programs that were

less expensive and more effective at reducing recidivism. In addition, Covington (1998b) encouraged community-based sanctions in lieu of incarceration that targeted female pathways to crime.

Failing (2005) argued that restorative justice was the best approach to punishing female offenders. She noted this model was grounded on an “ethical understanding of crime” and a necessary avenue of response for most female crimes, as it goes “beyond an approach that treats crime as a form of illness, or one that attempts to rectify deficits in women's social situations” (p.107). The process of “restoring” the offender to the community, and mending the relationship between victim and offender, appeals to a woman's “ethic of care” (Failing 2005). This approach recognized that “women's relationality, as much as anything, accounts for their status as criminals, as well as the road they take after entering the criminal system, either reoffending or exiting the system” (Failing 2005:110). This punishment model further acknowledged that women were both victims and perpetrators, concerned about the impact of their decisions on others, and “constantly aware that their actions provoke reactions” (Failing 2005:115-116).

Restorative justice focuses on repairing harm and bringing healing to all parties impacted by the crime, including the offender, the justice system, the victims and the community (Restorative Justice Online 2014). Generally, all parties come together to agree on a sentence to accomplish the goals of the offender and the crime. The program can be standalone and in lieu of incarceration, or in conjunction with terms of probation or supervised release.

In the federal system, pretrial diversion is available, but seldom used. This

option, which results in deferred prosecution, allows a low-risk offender, either before or after indictment, to enter into an 18-month contract with the federal prosecutor and probation office. The offender must agree to satisfy certain conditions, including treatment as necessary, to pay all fines and/or restitution, and to have regular contact with a probation officer during the 18 months. Upon successful completion of the contract, all charges are dismissed and no conviction is recorded. However, if the pretrial diversion is unsuccessful, the government may proceed with prosecution.

A number of individual states have implemented alternatives to incarceration that have not yet been adopted by the federal system. For example, suspended sentences are often offered after a plea of guilt has been entered (FindLaw 2014). This type of arrangement delays sentencing of the offender, giving him or her an opportunity to comply with established conditions, such as substance abuse or mental health treatment. If successful, the defendant is not required to serve a term of imprisonment. If unsuccessful, the judge may order the defendant to serve the original sentence for the offense.

First-time offenders in some state criminal justice systems can be eligible for non-adjudicated probation programs, in which no plea of guilt is required in advance. Conditions similar to those described for the pretrial diversion program are required, and if successfully completed, can result in dismissal of the charges and expungement of the record. If unsuccessful, a revocation hearing may be held, the judge can sentence the offender to incarceration, and the process will result in a conviction.

These are only a few examples of viable alternatives to prison sentences for a low-risk, first-time female white collar offender. Such programs not only save

money related to the building of additional prisons and the warehousing of offenders, but they also provide options tailored to better fit the crime and offender, protect the public, provide rehabilitation and preparation for reentry, and meet the ends of justice. The ability for the offender to remain in the community also strengthens families and the community, allowing her to remain with her children, to work, and to repay her victims. Strong evidence of lower recidivism rates and risk of harm to the public for females warrants the use of intermediate sanctions without custody, completed in community settings that target female pathways to crime. As Covington (1998b) urged, most women do not need to be incarcerated to protect the community. Rather, they should be taught to value life, especially their own.

In summary, a number of important issues from the literature on white collar crime, theories of female and white collar offending and recidivism, and recent attempts at sentencing reform in the name of “equal justice” informed the current study. The absence of a true consensus on what constitutes “white collar crime” has flawed not only theories of white collar offending, but also criminal justice decision-making in terms of classification of crimes as “white collar,” and the ultimate punishment for those crimes. The inclusion of offenses in this category such as credit card fraud has taken these crimes collectively outside the scope of occupational crimes committed by “high status” offenders. However, policies and practices governing punishment of white collar crimes have remained punitive, with the public still holding the belief that these are serious crimes against society that must be punished harshly. Although this study cannot resolve the issue of definition or classification, it does bring to light a more accurate depiction of the female offender committing “white collar” crimes that does

not comport with the public image generated by such nationally-publicized cases as the recent insider trading conviction of one celebrity, Martha Stewart.

The literature on female offending, and particularly on female pathways to offending and recidivism, were also important to this study in identifying common risks of recidivism for female offenders and in determining whether the sample female white collar offenders shared any of those risks, or were different from the “common” female offender. In light of the stark differences between Sutherland’s white collar criminal and that of Daly’s (1989) female white collar offender, it was uncertain whether traits most closely related to offending in females would be present in the sample.

Finally, the push to resolve sentencing disparities among (male) offenders for “like” crimes through the creation of the federal sentencing Guidelines did not end well for white collar criminals or female offenders. The requirement for “neutrality” as to sex, race, socioeconomic status, and all matters relating to family and social responsibilities, eliminated consideration of many justifications for lower and less severe punishment of females applied by federal judges prior to the Guidelines becoming effective. And despite recognition by Congress that first offenders were worthy of alternative sanctions to incarceration, the Guidelines never permitted those standards to apply to first offenders who committed white collar crimes. The punishment schemes remain punitive for white collar offenders, even after judicial discretion was returned to sentencing. This recent history of federal sentencing reform was important to informing proposed changes to sentencing policies and practices based on the outcomes of the current study. In the following chapter, the research questions and methods used in the current study are provided.

CHAPTER 5

METHODS

This study was framed in a feminist pathways conceptual approach in which the same factors that likely influenced a female's pathway to offending were also predicted to be factors for recidivism. No prior research had applied the feminist pathways perspective to recidivism by female white collar offenders. The literature is replete with guidance toward the most important factors to consider in the study of female pathways to recidivism for other types of crimes, as well as proven methods for analyses. That knowledge was relied upon and served as a starting point for a focus on outcomes for the female white collar offender.

The quantitative research design used both descriptive methods and multivariate analyses to address the following research questions:

1. What is the profile of a federal female white collar offender?
2. What factors are significant predictors of recidivism for female white collar offenders?
3. Does serving a term of incarceration increase the likelihood of recidivism for a female white collar offender?
4. Are first-time female white collar offenders significantly different from repeat offenders in terms of their demographics and risk factors?

Hypothesis 1 predicted that the profile of a female white collar offender would reflect a combination of risk factors for recidivism recognized in the literature on female offending and white collar offending. Hypothesis 2 predicted that the risk factors found significant for recidivism among the sample offenders would include those found

in female pathways research. Hypothesis 3 predicted that having served a term of imprisonment would be linked to higher rates of recidivism, particularly in the sub-sample of first-time offenders. Hypothesis 4 predicted that differences would be found between first-time and repeat female white collar offenders with respect to the aggravating and mitigating effects of certain factors on recidivism, particularly those falling into the categories of demographics, female pathways, criminal histories, and sentencing decisions.

Description of the Data

The data for this study consisted of a restricted access data set containing a limited subset of variables selected by the author from quantitative data collected by the United States Probation and Pretrial Services and the Administrative Office of the United States Courts archived and maintained within the "Probation and Pretrial Services Automated Tracking System" (PACTS). The data were obtained under the terms of a Confidentiality Agreement for use only in connection with research for this dissertation. This subset contained data for all male and female federal offenders who began a term of supervision (supervised release or probation) from October 1, 2004 through September 30, 2007 ($N = 665,527$), with approximately 20% of the total population being female offenders ($N = 130,241$). The population of all female white collar offenders was selected for this study from the PACTS data set.

Implementation of the PACTS system began in April 2001 as both a case tracking and case management tool, and a total information system. Validation of the data was accomplished through use of standard tables for the various codes and through cross-validation of user inputs (Cadigan 2001:27). The PACTS universe consisted of

all defendants charged with Class A misdemeanor and felonies, as well as Class B and C misdemeanors who were proceeded against before federal district court judges throughout the United States. PACTS tracked activities beginning with case activation by a pretrial services officer to the termination of post-incarceration supervision or probation by a probation officer. The term of imprisonment and/or probation and supervised release was tracked, as well as the amount of fine and restitution and special conditions ordered by the judge.

Each offender received a unique PACTS identification number when he or she was first processed in the pretrial services office after being charged with a crime. Information was collected from the offender, including demographics. Additional data were obtained at the post-conviction stage, at which time the “Risk Prediction Index” (RPI) score was calculated. These data were updated after the offender’s release from incarceration but prior to the beginning of a term of supervised release by the federal probation officer assigned to oversee the offender’s supervision.

The PACTS data subset used in this study contained variables on offenders relevant to the current study, including demographics, offense(s) of conviction, criminal history and RPI scores, and prison sentences, as well as special conditions imposed by the court, fines and restitution ordered as part of the sentence, treatment required during supervision, and whether the offender was revoked or rearrested during supervision. The uniformity across federal probation offices in the data collection process and standardized recording of events, along with the large, national universe of the population of offenders, made this data invaluable to accomplishing the goals of this study.

Dependent Variable

A dummy variable was created representing *Recidivism*, defined as judicial revocation of a term of supervised release or probation for any one or more technical offenses, or any documented instance of an arrest or revocation of supervision for new criminal conduct, while under active federal criminal justice supervision in the community (1 = revoked, 0 = not revoked).

Study Population and Subsamples

Three variables were created from the data to represent the population of *All Female White Collar Offenders (All FWCOs)* (N=33,228), and two subsamples. The population was computed from the following: [gender = 1 (female)] + (most serious offense (as recorded by the probation officer) = any one of six felony white collar offenses: counterfeiting, embezzlement, forgery, fraud, income tax, or mail fraud) + (felony convictions ≥ 0) + (age ≥ 18 and < 65). Two subsamples, *First-Time* and *Repeat Female White Collar Offenders* were computed as follows: [gender = 1(female)] + (most serious offense = a white collar offense, as defined above) + (age ≥ 18 and < 65). *First-time Female White Collar Offenders* (those with no prior felony convictions) were coded 0 ($n=26,054$), and *Repeat Offenders* (those with one or more prior felony convictions) were coded 1 ($n=7,174$). The “select cases” method was used to obtain frequencies, conduct cross-tabulations, compute chi-square values, and to conduct logistic regression analyses on the three populations of female white collar offenders. Filters were created for the population and each of the two subsamples.

Independent and Predictor Variables

Several categories of control and predictor variables were used in the analyses

as follows:

Demographics:

White: A dummy variable was created for race in which 1 = white/non-Hispanic, and 0 = all other races.

Age: “Age” was a continuous variable representing age (in years) while serving a term of probation or supervised release. All offenders began a term of supervision between October 1, 2004 and September 30, 2007. Age was computed from an existing age variable based on the end date of the PACTS data set (September 30, 2007) using the following formula:

Compute $X_{age} = \text{DATE.DMY}(30,09,2007) - \text{date_of_birth}$.

Compute $D_{AGE} = X_{age} / (365.25 * 24 * 60 * 60)$.

All female white collar offenders under the age of 18, and those age 65 and older, were excluded from the population and subsamples.

Education: A categorical variable for “education” was created as follows: 1 = no high school diploma or GED; 2 = high school diploma or GED; 3 = some vocational school, vocational school graduate, or associate’s degree; 4 = bachelor’s degree; and 5 = post-graduate degree. No other categories were available in the dataset.

Marital status: Three dummy variables were created for marital status as follows: *Cohabiting*, *Married*, and *Single* (i.e., single, divorced, separated, or widowed). The reference group for the regression analyses was “married.”

“Pathways” factors:

These variables were based on assumptions made from (1) the imposition of certain special conditions by the court required to be completed during the term of

supervision, and/or (2) risk and needs assessments by the probation officer prior to the start of the term of supervised release indicating the offender was experiencing issues identified by feminist criminological research as “pathways” to offending and recidivism. In each instance, a dummy variable was created in which 1 = yes (condition found), and 0 = no (condition not found):

Mental health: Offender history included a professionally-diagnosed mental health disorder.

Life skills: Offender was required to attend some type of life skills counseling (e.g., financial, general life skills) as a special condition of supervision.

Alcohol abuse: Offender was required to attend alcohol abuse treatment as a condition of supervised release.

Drug abuse: Offender was required to attend drug abuse treatment as a condition of supervised release.

Unstable employment: Offender was assessed by a federal probation officer as having questionable employment, being underemployed or unemployed, or having an unstable or poor work history.

Criminal history:

These variables related to the offender’s current criminal history known to impact recidivism:

RPI: This was an original categorical variable in the PACTS data set. The “Risk Prediction Index” score is calculated by federal probation officers based on information about an offender to estimate the likelihood of recidivism during the offender’s term of supervision. That information includes date of birth, number of

prior arrests, whether a weapon was used in the offense, whether the offender was employed at the start of supervision, the history of offender's illegal drug or alcohol abuse, whether the offender had ever absconded from a prior period of supervision, whether he or she had a college degree, and whether he or she was living with a spouse and/or children at the start of supervision. RPI scores range from 0 to 9, with lower scores associated with lower risk of recidivism, and higher scores (i.e., 7, 8, 9) associated with high recidivism rates. Those with the lowest scores generally consist of offenders with no criminal history or drug and alcohol abuse, older in age, employed at time of offense, and most often convicted of a white collar crime (Johnson et al. 2011:4).

Prison incidents: This dichotomous variable indicated the probation officer received reports from prison authorities documenting disciplinary action taken to address more than minor or multiple infractions (1 = yes, 0 = no).

Criminal associates: This dichotomous variable indicated that the current offense involved an aggravated role in a conspiracy, that the offender was associated with organized crime, or that her social network is made up primarily of those engaged in criminal activity (1 = yes, 0 = no).

Factor related to the offense:

Employment-related offense: A dichotomous dummy variable was created to indicate that the most serious offense charged (i.e., counterfeiting, embezzlement, forgery, fraud, income tax, or mail fraud) was related to the offender's employment (1 = yes, 0 = no). This was the most reliable factor available in data to indicate whether the crime could be described as "occupational" versus "non-occupational."

Sentence and term of imprisonment:

Incarcerated: A dummy variable was created in which 1 = all offenders who spent one or more days in prison, and 0 = all offenders who did not spend time in prison.

Fine: This dummy variable indicated that, as part of her sentence, the offender was required to pay a fine as a mandatory condition of supervision (1 = yes, 0 = no). On inspection, the data entered for actual amount of fine appeared to be inaccurate, so the amount of the fine was not included as a variable.

Restitution: This dummy variable indicated that, as part of her sentence, the offender was required to make restitution in the form of community, property, service, or money as a mandatory condition of supervision (1 = yes, 0 = no). Upon inspection, the data entered for actual amount of restitution appeared to be inaccurate, so the amount of the restitution was not included as a variable.

Missing Data

It is common for archival administrative and official record data sets to contain missing or incomplete data, and preliminary review of the PACTS data shows no exception. Missing units in administrative data sources generally result from data recording or data entry problems, which can cause a loss of statistical efficiency. In this case, it is believed that the missing data are “missing completely at random” (also “MCAR”), meaning the “missingness is independent of both the observed and missing data” (Brame, Turner and Paternoster 2010:280). It appears that a strong assumption can be made that these data are missing due to inconsistencies across the country with data collectors (primarily pretrial services and probation officers) as to the fields from the PACTS PS2 worksheet they complete for any given offender, without any

systematic differences in the missing and observed cases. Brame et al. (2010) recommended addressing MCAR missing data with “listwise deletion” to create a random sample of the original. As long as the “probability of missing data on any of the independent variables is not related to the dependent variable, then obtained regression estimates will be unbiased” (Brame et al. 2012:283). Therefore, listwise deletion was the method used to address missing data in the current study.

Limitations of the Data

Analyzing the population of federal female white collar offenders from the PACTS data set limits the generalizability of most of the current research to female white collar offenders convicted in a federal court. Offenders handled by state criminal justice systems face differences in the types of offenses designated as “white collar,” the likelihood of prosecution, sentencing structures, and punishment options.

The offenders in this data set were sentenced when the Guidelines were mandatory, and prior to the guidance in December 2007 from the Supreme Court in *Gall v. United States* that returned considerable discretion to federal judges in the imposition of sentences. At the time these offenders were sentenced (i.e., prior to September 30, 2007), discretion was strictly limited to the judge selecting a term within the Guidelines calculation range for a particular defendant, and applying Guidelines policies relating to departures and variances.

Daly (1992, 1994) used presentence investigation reports prepared by probation officers as her data source for the study of female offenders. Probation officers collected the PACTS data used here partially from presentence reports, but mostly from offenders sentenced to a term of probation or supervised release. As Daly (1992, 1994)

points out, the accuracy from these sources is filtered by a number of factors: the data the pretrial services or probation officer chose to include on a particular offender; his or her interpretation of the appropriate data sub-category (i.e., whether the crime of bank fraud was placed under "fraud" or some other offense type); and the dynamics of the defendant-probation officer interview as to power and trust, and whether the defendant's memory was accurate or he or she was truthful. The validity and reliability of certain variables used in this study from the PACTS data were dependent upon these factors. In addition, no testing of the reliability and validity of the PACTS PS2 worksheet used by probation officers to collect information from offenders was located in the literature or provided by the Administrative Office of the Courts. Therefore, it is unknown whether certain variables measured what they purported to measure.

Because the data were obtained under a Confidentiality Agreement, any future publication of the dissertation research requires permission from the Administrative Office of the Courts. The restrictions on access to the data also limit the duplication of the research by others.

Analyses of the Research

Due to the large size of the PACTS data set used in this study, and the concern that it is relatively common to achieve statistical significance in analyzing such a large group of offenders, a minimum threshold of significance was set at a probability value of $p \leq .01$ for bivariate correlations, and $p \leq .001$ for the logistic regression analyses. In large volumes of national offender data such as PACTS, common sources of errors would not be as prevalent, such as sampling error, reliability and validity, since the offender population is well-defined and accessible to those collecting the data.

Although the data analyzed represent the population of all female white collar offenders under federal supervision within the PACTS data that met the author's selection criteria, the author believes inferential statistics are appropriate to this study and that these findings may be inferred to all federal female white collar offenders without regard to time of conviction or status of punishment or supervision. A prior study by Van Nostrand and Keebler (2009) also applied inferential statistical methods to a population extracted from PACTS data.

To begin the analyses, bivariate correlations were computed between all study variables to determine relationships between the variables and to confirm there were no multicollinearity issues. Frequencies and descriptive statistics also were calculated for all variables within the population of all female white collar offenders, and for the subsamples of first-time and repeat offenders.

Due to the numerous risk factors that increase the likelihood of recidivism for female offenders, according to the literature and theories of offending, a multivariate method was essential to this study. Binary logistic regression analyses were performed to address Research Questions 2 through 4. This statistical method was appropriate for estimating the factors (represented by continuous and categorical independent variables) that influenced recidivism for the sample of all female white collar offenders. Logistic regression combines the independent variables to estimate the probability that a particular event (i.e., recidivism) will occur. In addition, cross-tabulations and chi-squares were calculated to demonstrate how first-time and repeat female white collar offenders were different. Selection of appropriate predictor and control variables relied upon the literature and theory relating to female and white collar

offending, punishment, and recidivism, including demographics, “female pathways” factors, criminal history, and sentencing decisions. Also important to this study, due to the large size of the population, was the use of listwise deletion of cases for missing data, which limited analyses to the remaining cases.

CHAPTER 6

FINDINGS

The research questions were addressed by examining the overall population of female white collar offenders ($N=33,228$) and two subsamples: (1) first-time female white collar offenders ($n=26,054$), and (2) repeat female white collar offenders ($n=7,174$). However, as missing values were handled using listwise deletion for both the bivariate correlations and the logistic regression models, fewer cases were analyzed ($N=22,388$). This method eliminated all cases that had a missing value for any variable.

The two subsamples shared common characteristics, but differed in significant ways. For each group, the age range at which most offenders were serving their terms of supervision was 25 to 45, which represented over 60% of the participants. Over 30% of first-time offenders were age 45 to 65 at the time they began supervision for their first felony offense. White offenders were most prevalent in the sub-sample of first-time offenders (57%), while non-white offenders represented the highest percentage of repeat offenders (55%). Over 22% of all female white collar offenders had between one and three prior misdemeanor convictions, and over 17% had between one and three prior felony convictions. For first-time offenders, who were defined by an absence of prior felony convictions, 18% had up to three prior misdemeanor convictions. However, 39% of repeat offenders had up to three prior misdemeanor convictions, and over 80% had up to three prior felony convictions.

Table 1 shows the bivariate correlations computed between the dependent and all independent study variables within the population of all female white collar

offenders to measure the degree of association between the variables using the Pearson coefficient. Due to the large population size, statistical significance was computed using a two-tailed test at the significance level of $p \leq .01$. The effect sizes of the relationships in a majority of the correlations were weak to moderate, but most were significant.

A number of important results were found to be consistent with the literature on female offending. Overall, combinations of traditional and gender-specific risk factors were significantly correlated with recidivism and with each other. Alcohol abuse was the only variable not significantly associated with recidivism. Increased age ($r = -.127$), higher educational attainment ($r = -.083$), and possessing life skills ($r = -.023$) were associated with lower rates of recidivism. These findings were consistent with theories of adult-onset and white collar offending. In addition, the five female pathways factors used in the study were significantly correlated. Drug abuse and alcohol abuse were strongly and directly associated with each other in this population ($r = .528$), and each had a positive and significant association with other pathways variables, such as lacking life skills ($r = .045$ and $.058$, respectively), being diagnosed with mental health issues ($r = .074$ and $.118$, respectively), and unstable employment ($r = .085$ and $.044$, respectively). In addition, drug and alcohol abuse were negatively correlated with age ($r = -.059$ and $-.122$, respectively) and education ($r = -.066$ and $-.122$, respectively), suggesting that those factors related to being younger and having lower educational attainment.

Unstable employment was positively associated with mental health issues ($r = .108$), having a higher RPI score ($r = .202$), having criminal associates ($r = .099$), and

recidivism ($r = .116$). Not surprisingly, drug abuse, mental health issues and unstable employment were all positively and significantly related to having been disciplined for incidents while in prison ($r = .030$, $.035$ and $.042$, respectively). Being single had a positive relationship with alcohol and drug abuse ($r = .044$ and $.097$, respectively), higher RPI scores ($r = .232$), unstable employment ($r = .062$), and recidivism ($r = .074$). However, being single was negatively correlated with being white ($r = -.222$). Marriage was inversely related to abusing drugs and alcohol ($r = -.060$ and $-.112$, respectively), having criminal associates ($r = -.030$), having a higher RPI score ($r = -.259$), unstable employment ($r = -.061$), and recidivism ($r = -.085$). However, marriage had a positive relationship with committing an employment-related crime ($r = .074$) and with being white ($r = .213$). These results support theories of female pathways to offending, as well as theories of white collar offending. As expected, the criminal history factors of higher RPI scores, having criminal associates, and being reported for prison incidents, were positively related to recidivism ($r = .273$, $.054$ and $.027$, respectively). Interestingly, sentences that included an order to pay a fine or restitution were inversely associated with recidivism ($r = -.036$ and $-.165$, respectively), indicating a financial obligation by an offender to victims or the government was related to lower rates of reoffending.

Some findings were contrary to prior research. None of the study factors had a strong or even moderate association with being incarcerated, although most were statistically significant at $p \leq .01$. Drug abuse had a weak, but significant, inverse relationship to recidivism, while alcohol abuse was not related to recidivism. Increased age, education, and life skills had no association with reported prison

incidents. According to the literature, the weak associations and variances within many of these correlations are attributable to factors unaccounted for in explaining certain outcomes, particularly incarceration and recidivism. The importance of those factors will be more fully addressed in the discussion section below.

[Table 1 about here]

Table 2 presents descriptive statistics for all study variables for the entire sample of all female white collar offenders. The frequencies were analyzed to create the profile of this group to address Research Question 1. All dependent and independent variables, with the exception of age, RPI score, and education, were dichotomous. Education was a categorical variable. Age was a continuous variable, and RPI score was an ordinal variable; therefore, only the means and standard deviations are reported for those two variables.

The mean age for the sample was nearly 39 years old (S.D. 10.665), which is slightly higher than estimated in the adult-onset offending literature, but consistent with theories of white collar offending. Over 78% of the offenders had no prior felony convictions, and only 9.1% reoffended while serving a term of federal supervision or had their supervision revoked. The majority of offenders had received a high school diploma or earned a GED at the time they began supervision, and over 12% had earned a bachelor's or post-graduate degree. The vast majority were single (60%), and over 53% were white. No variable was available in the PACTS data to determine whether these offenders had children in their care at the time of the offense.

With regard to the female pathways variables, these female offenders were less likely to have conditions predicted by pathways theories. The two most prevalent

factors were being diagnosed with a mental health issue (43%) and having an unstable employment record (42%). The other two factors, lacking life skills and substance abuse, were found in 13% or less of the sample. Only 13% were identified as having committed an employment-related offense.

The number of offenders with factors indicating a prior criminal history was also low. The mean RPI score (based on a scale of 0 to 9, with 9 being highest risk) was just over 2 (S.D. 1.755), predicting a very low risk of recidivism during and after supervision. Less than 1% of offenders were reported for incidents occurring while in prison, and just over 14% were found to associate with other criminals. Despite low criminal histories, over 52% received sentences of incarceration. In addition, 39% of the offenders were ordered to pay restitution to the victims of their crimes, and nearly 3% were ordered to pay a fine to the federal government.²

[Table 2 about here]

For the logistic regression models in Tables 3 and 5, regression coefficients and odds ratios were presented predicting the relationship between the independent variables and the dependent variable, *Recidivism*. The coefficients estimate the amount of increase or decrease in the likelihood of recidivism that would be predicted by a one-unit increase or decrease in the predictor variable, holding all other variables constant. For these models, the “enter” method was used in which all covariates were entered into the equation at the same time. Coefficients were converted into odds ratios to better interpret the relationships. The odds ratio explains how much the odds improve for predicting recidivism knowing the independent variable. As previously

² A fine or restitution may be ordered with or without a sentence of incarceration.

discussed, due to the large size of the population, statistical significance of each coefficient is shown only at the probability value of $p \leq .001$.

Table 3 presents the results of two multivariate logistic regression models estimated for the entire sample of all female white collar offenders. These analyses addressed Research Questions 2 and 3 by identifying significant predictors of recidivism for the sample, and predicting the effect of incarceration on the likelihood of recidivism for that group. In Table 3, the dependent variable for recidivism was regressed on all independent control and predictor variables, as well as the variable for “first-time/repeat offender.” In Model 1, the incarceration variable was omitted as a predictor of recidivism, but was included in Model 2. Nagelkerke R^2 , which is commonly used to represent the improvement of a model over the null model with no independent variables, or the explained variance, is .236 for both models. This indicates that the amount of explained variance was limited to just under 24%; however, the likelihood ratios showed a number of statistically significant explanatory variables in both models. Chi-squares for both models were significant at $p \leq .001$, and the prediction success overall was 92%.

Surprisingly, the results of the logistic regression analyses for Models 1 and 2 were virtually identical. In both models, the independent variables that were statistically significant to the analysis were being white, age, having mental health issues, unstable employment history, higher RPI scores, being ordered to pay restitution, and being a repeat offender. With respect to demographics, female white collar offenders who were white were 20% less likely to reoffend. As the literature would predict, increasing age also negatively affected recidivism. For all regression

models estimated for this study, being married during federal supervision was the reference group. However, neither cohabitation nor being single was significant to recidivism.

The female pathways factors that were significant in both models had relatively strong effects on recidivism. Being diagnosed with a mental health issue increased the likelihood of recidivism by 39%, and having a history of unstable unemployment increased the likelihood by 70%. Among the criminal history factors, only RPI score was significant, increasing the likelihood of recidivism by approximately 35%. This was expected, as higher RPI score calculations are designed to predict reoffending. This was confirmed by the results for the independent variable representing status as a first-time or repeat offender (binary, with 0 = first-time offenders), which also had a significant positive effect, with higher levels of that variable (i.e., toward being repeat offenders) increasing the likelihood of recidivism by over 60%. As to sentencing factors, being ordered to pay restitution had a negative effect on recidivism. The most remarkable finding was that having been incarcerated was not significant to the likelihood of recidivism, as shown in Model 2.

[Table 3 about here]

Tables 4 and 5 addressed Research Question 4 by identifying differences and similarities in factors predicting recidivism between the two subsamples of first-time and repeat female white collar offenders. Table 4 presents cross-tabulations and chi-square statistics for all study variables reported in Table 2 for the two subsamples. The contingency table shows the joint distribution of each variable for the two groups. As expected, only 6% of first-time offenders, compared to 20% of repeat offenders

(those with at least one felony conviction prior to the white collar offense for which they are currently serving a term of supervision) reoffended. The mean age for both groups was the same (38 years). Among first-time offenders, 56% were white, compared to only 42% of repeat offenders. Educational attainment was significantly different for the two groups as well. The majority of both groups had received a high school diploma or GED, but for first-time offenders, 13% had earned a bachelor's or post-graduate degree, compared to only 7% of repeat offenders. In both cases, most offenders were single.

As in Table 2, first-time offenders had lower occurrences within the female pathways factors. Again, mental health issues and unstable employment were the most prevalent (41% and 39%, respectively). Only 11% had a history of drug abuse, 4% alcohol abuse, and less than 1% lacked life skills. By sharp contrast, repeat offenders had much higher occurrences in all pathways categories except lacking life skills, including being diagnosed with mental health issues (51%), unstable employment (53%), drug abuse (22%), alcohol abuse (9%), and a higher mean RPI score of 3.644 compared to 1.670 for first-time offenders (significantly different from first-time offenders, $t = 74.090$, $p \leq .001$). The findings for both groups comport with the literature on female pathways theories for first-time and repeat offending. As expected, repeat offenders had higher ratios of prison incidents, associating with other criminals, and incarceration than first-time offenders. However, repeat offenders were less likely to have committed an employment-related offense, or to have been ordered to pay restitution or a fine as part of their sentence.

To determine differences between first-time and repeat female white collar

offenders among the study variables, Pearson chi-square tests of independence were calculated, with the exception of age and RPI scores, where t-tests were computed. This was the optimal statistical procedure to use with frequency data derived from cross-tabulations where both variables were categorical and the available sample size per cell was greater than five. Unlike the bivariate correlations, indication of a relationship between two variables based on chi-square tests does not indicate the strength or direction of the relationship. All chi-squares were found to be statistically significant at the statistical significance level of $p \leq .001$, with the exception of restitution and cohabitating, neither of which were significant. These results show there was a relationship between each study variable (except cohabitating and restitution) and being a first-time or repeat female white collar offender. Because age was a continuous variable and RPI score was an interval variable, independent samples t-tests were conducted rather than chi-squares to examine whether there was a significant difference between first-time and repeat offenders in relation to age and to RPI scores. For both age and RPI score, the tests revealed statistically significant differences between the two groups: age ($t = 4.187$, $df = 12724.80$, $p \leq .001$), and RPI score ($t = -74.090$, $df = 8733.910$, $p \leq .001$).

[Table 4 about here]

Table 5 presents separate multivariate logistic regression models for the two subsamples, first-time and repeat female white collar offenders, in which the dependent variable for recidivism was regressed on all independent study variables. These models estimated the odds of belonging to one group compared to the odds of belonging to the other. Nagelkerke R^2 indicated that the explained variance for the first-time

offenders model was .205, and for the repeat offenders model, .222. As with the regression models in Table 3, the amounts of explained variances were limited, but most of the independent variables selected for this study were significant for both groups. Chi-squares were significant for both models at $p \leq .001$, and the overall prediction success was 94% for first-time offenders and 84% for repeat offenders.

Some results in Table 5 were similar to those in Models 1 and 2 reported on Table 3. The demographic factors of being white and older still had negative effects on recidivism for first-time offenders, although being white was not significant for repeat offenders. Higher levels of educational achievement had a significant negative effect for first-time offenders, making them 18% less likely to reoffend. However, education was not significant to recidivism for repeat offenders. Cohabitation was only significant for repeat offenders, increasing the likelihood of reoffending by 85%. Being single was not significant for either group.

The female pathways factor of being diagnosed with mental health issues was significant and positive for recidivism for both first-time and repeat offenders, increasing the likelihood of recidivism by 32% and 40%, respectively. Having been ordered to have drug treatment was not significant for first-time offenders; however, unexpectedly, this factor had a fairly strong negative effect on recidivism for repeat offenders, decreasing the likelihood of recidivism for that group by 53%. As with the models in Table 3 for the population of all female white collar offenders, having a history of unstable employment was significant and positive for both groups in Table 5, increasing the likelihood of recidivism for first-time offenders by 54%, and by 90% for repeat offenders.

Criminal history factors were also found to have similar results to those in the Table 3 models, with a few notable exceptions. Higher RPI scores were still positive predictors of recidivism for both first-time and repeat offenders, increasing the odds of recidivism by 43% and 27%, respectively. Remarkably, as in Table 3, having been incarcerated was not a significant factor for recidivism in either subsample. However, as with the models in Table 3, having been ordered to pay restitution was significant and negative for both groups, with virtually equal effects, decreasing the likelihood of recidivism by almost 79%.

Overall, many findings for the population and subsamples were consistent with the literature. However, there were several significant exceptions and some unexpected results. The next chapter discusses each research question in the contexts of these findings and prior empirical studies on female and white collar offending, punishment, and recidivism.

CHAPTER 7

DISCUSSION

This study contributes to the literature by examining recent data on federal female white collar offenders to create a profile of their characteristics and to identify risk factors for recidivism from the rich body of literature on female and white collar offending. In particular, analytical decisions relied upon theories developed from feminist criminologists, feminist pathways research, and adult-onset offending, as well as those related specifically to recidivism among female offenders. In addition, this research evaluated the impact of the current federal sentencing structure on this group of low-risk offenders. Decades of empirical studies have been committed to isolating specific risk factors unique to female offending and recidivism. Likewise, a number of studies have focused on theories of white collar offending (primarily from a male-offender perspective), and how the offense and the offender differed from other types of criminality. Many scholars also have dedicated their research to the plight of the incarcerated female offender and mother, and the far-reaching impact and unintended consequences of imprisonment on their lives and the lives of their children and families. However, no previous study has combined the critical findings from this research to gain an understanding of the unique risks for recidivism by the female white collar offender and propose changes to federal sentencing policies that promote alternatives more appropriate to meet the ends of justice.

The Profile of a Female White Collar Offender

One of the goals of this study was to develop a profile of female white collar offenders. The analyses indicated that the population used in this study was very

similar to those found in other studies of white collar offenders (Daly 1989; Pogrebin et al. 1986). The majority were white, single, and high school graduates. Marriage was a protective factor for reoffending, especially for older offenders, while cohabitation increased the risk of recidivism for repeat offenders. The latter could be a function of narrowed choices in partners for repeat offenders. Women who are convicted face harsh stigma in the eyes of the public and are less likely to find partners, especially non-criminal male partners (Owen 1998; Schur 1984). Therefore, those who were cohabiting may have been in relationships with male offenders, thus increasing their risk.

As predicted, risk factors for recidivism identified in prior studies on white collar crime, female offending, and feminist pathways theories, were found in the population and both subsamples of female white collar offenders. These factors included the five variables selected from the feminist pathways literature for analysis in this study. As expected, the frequencies were somewhat lower than those predicted by female pathways studies of general female offender populations. But overall, these female white collar offenders shared a number of key risks and protective factors of recidivism inherent in all female offenders: they were mostly first-time offenders (Britton 2000:54-55); single (Belknap 2007; Sharp 2014); had a high school education or GED (Salisbury et al. 2006); lacked employment skills and job stability (Belknap 2007); had unresolved mental and emotional problems (Salisbury and Van Voorhis 2009); and were substance abusers in need of treatment (Salisbury and Van Voorhis 2009). Differences between the population of female white collar offenders and other female offenders were explained by the white collar offender literature: the majority of

the sample were white (Poortinga et al. 2006); they experienced lower criminal histories than would be expected in a general female offender sample, with most having no prior felony or misdemeanor convictions before committing the current white collar offense (Britton 2000); and they had offended at an older age (Eggleston and Laub 2002).

Additionally, these female white collar offenders were assessed with a very low risk of recidivism compared to the “typical” female offender (Deschenes et al. 2006; Flavin 2001:71; Morash and Schram 2002). A lower risk for recidivism would be expected for females who began offending in adulthood. As Simpson et al. (2008) found in their study of female offenders, adult-onset offenders were more likely to be married at the time of arrest, had fewer criminal associates and friends, fewer arrests, and had experienced fewer incidents of violence, sexual abuse and drug involvement than those who offended at an earlier age. The current findings also support Benson and Moore’s (1992) critique of the “general theory” of crime, in which they contended that white collar offenders started much later in life and had much lower rates of offending and involvement in other forms of deviance. They argued that the “general theory” of self-control preventing crime could be voided when causal forces occurred in an individual’s personal life, including the relational crises proposed by Gilligan (1982) that drew upon a woman’s ethic of care and motivated her to offend. The results also suggest that white collar “crimes of trust” (which amply describes the six offenses selected for this study) were more often committed during adulthood by offenders with characteristics such as drug and alcohol abuse and being divorced (Menard et al. 2011). Life course theory (Sampson and Laub 2003), arguing that criminality declines with age, particularly in the middle adult years, was not supported by the current findings for

female white collar offenders.

Contrary to the public's image of the "white collar criminal," only 13% of the sample was identified as having committed their offense in connection with their employment. This finding supports the proposition that "white collar crime" has evolved beyond the scope of Sutherland's concept of criminality of the privileged class, and into a category of crime that is not only possible, but likely, at all social levels (Hirschi and Gottfredson 1987). It also supports Daly's (1989) findings that women's share of occupational crime was low. Although the current research and data cannot resolve the matter, the parallels between Daly's conclusions and those here favor Steffensmeier et al.'s (2013) recent argument that a woman's "feminine cooperative behavior" and ethics of care provide her a deterrent to corporate wrongdoing. Gilligan (1982) would agree.

Despite statistics that reflect little or no prior offending and an extremely low risk of reoffending, more than half of female white collar offenders in the sample were sentenced to a term of imprisonment. Restitution was ordered as part of the sentence for over one-third of the sample, but only 3% were ordered to pay a fine. Although not examined for this study, it is possible that fines were ordered in lieu of incarceration in those few cases.

Predictors of Recidivism for Female White Collar Offenders

I then turned to an examination of the risk factors linked to higher rates of recidivism, examining them collectively, with and without incarceration included in the analyses. Adding the variable for incarceration did not substantively alter the impact of any of the strongest risk factors in either model, thus permitting this study to identify

those factors most significantly related to an increase or decrease in the odds of reoffending among the population of female white collar offenders during their term of federal probation or supervised release. Incarceration was found not to be significantly related to recidivism in the population or the two subsamples.

The risk factors found to be most significant and strongly and positively related to an increased risk of recidivism included two that were chosen for this study from feminist pathways research: unstable employment histories (Belknap 2007) and being diagnosed with mental health issues (Salisbury and Van Voorhis 2009). The influence of these factors on recidivism by female offenders is borne out by feminist pathways literature and vast empirical research on female offending. What is unique is the discovery that these risks also impacted recidivism among female white collar offenders, contrary to the public's image of the affluent and well-connected white collar criminal.

Based on prior theories of adult-onset and white collar offending, the mean age of the sample offenders would be expected to be a strong mitigating factor against recidivism. The current study found a weak, though significant, negative effect of age, with increasing age only slightly decreasing the likelihood of recidivism. This impact was considerably lower than expected by most theories of adult offending, including those of Steffensmeier (1989), who demonstrated that the age-crime curve was different for white collar offenses due to the older age of the offenders; Gottfredson and Hirschi (1990), who proposed that frequency of crime declined with age due to stronger social control through bonding and attachment to others; and Sampson and Laub (2003), whose life course theory indicated declining criminality with age.

Additional unexpected effects were found in the current research. Those factors proving to be the strongest and most significant protectors against recidivism were being white (except for repeat offenders), and being ordered to pay restitution as part of the sentence. For repeat offenders, having been ordered to have substance abuse treatment was also a protective factor against reoffending. Prior feminist pathways research was well-settled that drug abuse had a strong effect on increasing the odds of recidivism for all female offenders (Daly 1992; Salisbury and Van Voorhis 2009). This unexpected finding could be explained by the recent aggressive response of federal courts and probation services in identifying and treating substance abuse while the offender is incarcerated or on supervision. The current analyses indicate these efforts may be proving successful in finally steering repeat female offenders toward a path to rehabilitation.

The surprising impact of paying restitution to the victim was also a significant finding. In the pre-guidelines past, courts sometimes used fines for those offenders with the financial means to pay them in lieu of confinement, yielding much public criticism that wealthy white collar offenders were being given the opportunity to buy their way out of prison (Schanzenbach and Yaeger 2006). However, female offenders, who were more likely to suffer economic marginalization than males and thus unable to pay a meaningful fine, were prejudiced by their inability to qualify for this sentencing alternative to prison. Restitution, on the other hand, became legislatively mandatory in 1996 and an integral part of sentencing under the Guidelines to ensure that victims of certain financial crimes were made whole for their losses (Title 18, United States Code, Section 3663A, 2010). Restitution orders are routinely imposed by sentencing courts

as a special condition of supervised release. In most cases, the offender is ordered to begin paying restitution upon their release from prison or upon commencement of a term of probation.

Prior research on recidivism by female offenders has overlooked the clear significance observed in the current study of imposing sentences involving financial obligations on females as a formal punitive means to exercise their ethic of care “for the trouble [they] caused others” (Collins et al. 2001; Klenowski et al. 2011). Schanzenbach and Yaeger (2006) urged that court-imposed fines in amounts that were proportionate to one’s ability to pay would be an equitable means of forgiving incarceration for many low-risk offenders. For the offenders in this study, however, the order to pay restitution as part of the sentence was not in lieu of imprisonment, but rather a condition of supervised release that had to be met in order for the offender to stay in the community. Failure to pay restitution is a ground for revocation of supervised release or probation, and return to prison. Nevertheless, the same ethic of care that may have triggered a woman’s white collar offense as a result of a family-related financial crisis also compels her to take care of her victims and be responsible for her crimes. These findings suggest that, whether the offender was more driven to fulfill these involuntary court-imposed financial obligations from a need to be accountable for her crime, or simply to remain free on supervision and not returned to prison, the financial responsibility was a strong deterrent against recidivism, and worthy of playing a much larger role in federal sentencing alternatives for female white collar offenders.

This study also explored the effect of serving a term of imprisonment on recidivism for female white collar offenders. Based on extensive prior research on recidivism among female offenders, as well as first-time offenders, it was predicted that incarceration would have a strong positive effect linked to reoffending for female white collar offenders (Bales and Piquero 2012; Nagin et al. 2009; Pritikin 2008). However, the analyses found no significant relationship. Bales and Piquero (2012) reached similar results, finding the effects of imprisonment on recidivism were reduced as the number of control variables increased. As the addition of incarceration to the analysis of the other study variables had virtually no effect on the significance of those factors on recidivism in this study, the explanation by Bales and Piquero (2012) may well apply here.

The findings suggest what other scholars have argued: that prosecution and conviction, regardless of sentence, are strong predictors of recidivism for white collar offenders due to stigma, embarrassment, and loss of social standing (Mason 2007; Braithwaite 1985). This study shows this may be particularly true for the female white collar offender, whose ethic of care and need to maintain close relationships are threatened by the consequences of prosecution and conviction, even when her crime was likely provoked by those same influences (Gilligan 1982). Nevertheless, the issue remains whether incarceration was necessary to satisfy the goals of punishment for such a low-risk group of predominantly first-time offenders when other alternatives were available.

The literature on punishment and recidivism of female, white collar, and first-time offenders certainly makes no case for imprisonment where unwarranted by

risk of harm or recidivism. To the contrary, evidence shows that females are treated more harshly in prison than males, regardless of their crimes (McClellan 1994). They are punished more often and more severely for minor disciplinary infractions (McClellan 1994; Salisbury and Van Voorhis 2009). Although the current data do not offer the ability to determine whether the sample offenders had children in their care prior to conviction or during their term of supervision, the Sentencing Commission study of recidivism among first-time offenders of both genders found that the majority of “Group A” offenders, who had no prior criminal history, had financial dependents, and nearly half were married (United States Sentencing Commission 2004). Most of Daly’s (1989) sample of female white collar offenders was single with children. Flavin (2001) argued that female offenders with family members to care for their children were more likely to be sentenced to a term of incarceration. The same fate was cast upon females who were viewed by the criminal justice system as having stepped outside their gender-role stereotypes by committing “masculine” crimes (Belknap 2007). An initial prison sentence under these conditions can lead to recurring terms of imprisonment for minor technical violations, even when the original white collar offense was minor (Javdani et al. 2011:29, 36).

The “institutionalized sexism” in the punishment of female offenders goes beyond over-imprisonment of low-risk females to a complete disregard of fundamental ethic of care issues for those who are imprisoned (Belknap 2001:163). Women’s federal prisons were modeled on male prisons, and are in remote locations throughout the United States, making regular visitation burdensome and accommodations for the care of children rare. An imprisoned mother’s ability to maintain contact with her

children is vital to her rehabilitation; however, few facilities are available to ensure the role of caregiver remains intact. The absence of an incarcerated mother from her family, the lack of provisions to maintain a mother's bond with her children, and fraternization between low-risk and high-risk offenders, all serve to weaken or even break the social bonds so vital to the rehabilitation and reintegration of female offenders upon their return to the community (Pritikin 2008:1055). Community recidivism after release from prison resulting in rearrest or reincarceration for technical violations of release have been attributed in great part to parental stress arising from lack of financial and emotional support (Salisbury et al. 2009; Van Voorhis 2012).

Further, the unintended consequences of a mother's absence in prison fall squarely upon her children, perpetuating the cycle of crime. These children often experience a high incidence of the same risk factors that led their mothers down the pathways to offending, such as mental health issues, substance abuse, and poor educational achievement; and like their mothers, they are prone to follow those same pathways to criminality and prison (Belknap 2007; Covington 1998a; Sharp and Marcus-Mendoza 2001; Sharp 2014). One protector against failure during imprisonment or supervision is the greater tendency of white collar offenders to draw upon their pre-offense moral ethics and follow institutional rules (Benson and Cullen 1988). However, regardless of the unexpected findings in this study with respect to the relationship between incarceration and recidivism, the difficulty of overcoming the effects of prison for any female offender is daunting and well-documented. The finding that is consistent among prior studies is that prison does not reduce recidivism and is not an effective alternative to sentences not involving incarceration (Cullen,

Jonson and Nagin 2011; Mears, Cochran and Bales (2012). Prison should not be the primary means of punishment for low-risk, non-violent, first-time female white collar offenders.

Comparing First-time and Repeat Female White Collar Offenders

The last research question required examination of the significant differences in demographics and risk factors between first-time and repeat female white collar offenders. This analysis began with the well-established premise that women are more likely to be first-time offenders and to have much lower recidivism rates than males (Britton 2000; Flavin 2001). And, indeed the data bore this out, with almost four out of five of the women in the population being first-time offenders.

As expected, repeat female white collar offenders had higher rates of the risk factors found most significant for recidivism in this study. Yet, the frequencies for the two groups revealed some meaningful differences. Most important to the current research was the fact that only 6% of first-time offenders had reoffended while on supervision for the instant offense, compared to 20% of repeat offenders. This result is much lower than the 33% rate found in Harris' (2011) study of first-time adult-onset offenders. However, it is consistent with the rate found among "Group A" offenders in the Sentencing Commission's own study of recidivism among first-time offenders (United States Sentencing Commission 2004).

In terms of demographics, the mean age for both groups was 38, consistent with the "Group A" first-time offenders in the Sentencing Commission recidivism study, whose mean age was 41 (United States Sentencing Commission 2004). Just over 40% of repeat offenders were white, compared to 56% of first-time offenders. Although

race was not significantly related to recidivism among repeat female white collar offenders here, race is consistently found in the literature to be a dominant predictor of recidivism for adult offenders (Gendreau, Little and Goggin 1996). Based on prior studies of white collar offenders, as well as the public's image of this classification of offenders, one would expect the majority of both subsamples to be white. Although the extensive literature on the effects of race on recidivism for female offenders was not discussed here, additional examination of the impact of race on reoffending by female white collar offenders is warranted. Fewer repeat offenders were married than first-time offenders, which limited availability of a strong protector against recidivism for that group. Of course, this is quite likely due to the stigmatization from prior convictions that helps limit the pool of available partners (Schur 1984). These numbers call into question the proposition by Gottfredson and Hirschi (1990) that demographic differences across white collar crimes should be nonexistent due to similar opportunity structures.

Turning to the female pathways risk factors, repeat offenders experienced much higher rates of mental health issues, substance abuse, and unstable employment than first-time offenders (Deschenes et al. 2006; Salisbury et al. 2006; Salisbury et al. 2009). The fact that repeat offenders had twice the rate of drug abuse as first-time offenders implies that efforts by the federal courts and probation services to treat this condition were much less successful for those with prior criminal histories. However, repeat offenders who were amenable to treatment were less likely to reoffend again.

With respect to factors related to criminal history, neither group had high incidence of prison misconduct, reaffirming that white collar offenders are more likely

to follow the rules. Repeat offenders had higher incidence of incarceration (most likely having served a minimum of two terms of imprisonment prior to their current term of supervision), and thus more extensive and frequent association with other criminals. Further, fewer of the white collar crimes committed by repeat offenders were related to their employment, suggesting that the types of crimes they committed were somewhat different from those of first-time offenders. Or, their higher incidence of unstable employment, likely the result of having a criminal record prior to the instant offense, may have limited their opportunities for committing crime in a work context or made those opportunities less financially appealing. Risk assessment scores for first-time offenders were quite low, correctly predicting a very low risk of reoffending for that subsample. However, the score for repeat offenders was double that of first-time offenders, although it was still low.

Despite the fact that first-time offenders had low RPI scores, no prior felony convictions, and lower rates of female pathways and criminal history risk factors for recidivism, nearly half were sentenced to a term of incarceration. This rate is even higher than the 41% within the “Group A” offenders sentenced to a straight prison term in the Sentencing Commission’s recidivism study of first-time offenders (United States Sentencing Commission 2004), suggesting that first-time female white collar offenders may be treated more harshly than other first-time female offenders or even their male counterparts.

Some interesting results were also found for first-time and repeat offenders when compared to those for the population. The impact of cohabitation on increasing the likelihood of recidivism was twice as strong for repeat offenders as for the

population, but not significant for first-time offenders. Presumably, this finding is attributable to several factors. Unlike a marital relationship, which imputes a fairly strong degree of commitment and shared legal and financial responsibilities, cohabiting relationships can be spurious and unstable. For female white collar recidivists such as those in the sample, who bear many other female pathways characteristics, it is possible they were coerced into their crimes by a cohabiting partner, or co-offended with a partner with whom they were in an unsound relationship. It is well-established that dysfunctional relationships increase the likelihood of criminal behavior (Salisbury and Van Voorhis 2009; Van Voorhis et al. 2010). However, the literature is unclear as to whether there are significant differences in the protective impact on recidivism between a strong and committed cohabiting relationship and one that has been formalized by marriage (Cobbina, Huebner and Berg 2010; Huebner, DeJong and Cobbina 2010).

Interestingly, as discussed above, drug abuse had a strong impact on lowering the odds of recidivism for repeat offenders, but was not significant for first-time offenders. It is likely repeat offenders were more drug-involved than first offenders, and had not been acquiescent to any treatment offered to them at the time they were sentenced for prior offenses. It is also possible their drug abuse led to the current offense, and they were more receptive to the treatment programs offered to prevent them from further offending. In addition, the fact that a higher number of repeat offenders were non-white may also contribute to a higher number having substance abuse issues, as race is generally associated with both drug abuse and recidivism (Huebner et al. 2010).

In terms of differences between the two groups, additional important findings

emerged. As to demographics, being white and achieving higher levels of education lowered the possibility of recidivism for first-time offenders, but those factors were not significant for repeat offenders. The fact that non-whites were more likely to have reoffended was likely related to a number of factors. Pathways theory is based in part on the intersection of race, class and gender, and how those factors affect opportunities and the ways in which females react to them. Gendreau et al.'s (1996) meta-analysis of studies identifying factors of recidivism found that race was one of the strongest predictors, particularly for adult offenders. One explanation for the current findings could be the detrimental effect of race on opportunities for employment following conviction. Pager (2003) found that it was easier for a white ex-offender to find a job than a black non-offender, even when their qualifications were the same. Further, race is consistently correlated with living in disadvantaged neighborhoods. As Sampson (1987) argued, stark racial differences in socioeconomic status for blacks living in disadvantaged urban communities are disproportionately worse than for whites living in the average white urban context. Based on the profile of the offenders in this study, and the differences found between first-time and repeat offenders, it is possible that the over-exposure of the non-white repeat offenders to these racially-correlated predictors of recidivism were at play, even for female white collar offenders. Neighborhood context and lack of opportunities for employment and successful reintegration based on their past offenses likely contributed to the ongoing cycle of crime for the sample repeat offenders.

Although levels of educational achievement were similar for both first-time and repeat offenders, having previously offended erased its protective value. Mental health

issues and unstable employment histories demonstrated the strongest risks for recidivism for both groups among the female pathways factors, but more so for repeat offenders. These findings are consistent with pathways literature that also finds these issues to be significantly related to offending (Daly 1992; Salisbury and Van Voorhis 2009).

Imposing restitution on both subsamples had the same strong, negative impact on recidivism as with the population of female white collar offenders. This finding further supports more widespread use of financial sanctions for both first-time and repeat white collar offenders (Collins et al. 2001; Klenowski et al. 2011; Schanzenbach and Yaeger 2006). Imposing a term of incarceration, however, was not significant to increasing the odds of reoffending for any of the offenders in this study. This may support Clear's (1996) belief that it is not the experience of being in prison, but "imagining" prison, that is the strongest deterrent to future offending (Pritikin 2008:1066). Even for a low-risk female white collar offender, once she has been imprisoned, gained more criminal associates, and become the victim of the life-long social stigma and isolation of being an ex-offender, the fear so important to specific deterrence may be gone. Overall, the prediction was supported that meaningful differences would be found between these two groups in risk factors for recidivism.

Limitations of the Current Study

This research was limited by the absence of data on some important female pathways factors related to recidivism, including whether the offenders had minor children for whom they were the sole caretaker prior to arrest; the source of motivation for their crimes, such as whether they were drawn into the offense by a partner or

spouse, or by a financial crisis related to their children or family members; the offenders' prior socioeconomic status or income level; the nature of their employment, if any, at the time of the offense; histories of victimization from childhood, adult violence, or sexual abuse; whether they were previously on public assistance; and the offender's actual age at the time of their first offense or the instant white collar offense. Further, the data did not permit research on the children of the incarcerated sample offenders or their outcomes after experiencing the absence of their mothers.

Limiting the race variable to only two categories also was a limitation in being able to further break down and analyze the characteristics of the repeat female white collar offender, or determine the relationship between specific race category and recidivism.

Also missing from the data were explanations or recommendations relating to the punishment imposed on these offenders. The research would have been enhanced by the ability to make additional findings as to whether, and to what degree, the sentences were attributable to a judicial evaluation of the relevant factors mandated by Congress and the Guidelines, and to what extent, if any, the judge considered the status of the victim and her unique risk factors or family responsibilities. This type of information is generally contained in presentence investigation reports prepared by federal probation officers after conviction and prior to sentencing; however, these details were not available in the PACTS data used for this study.

Finally, only limited information was included in the data regarding the offender's experiences and disciplinary actions taken during incarceration from reports provided to the probation officer by the Bureau of Prisons at the time of release from

custody.

Impact of Sentencing Reform on Female White Collar Offenders

The current study's most remarkable finding was that female white collar offenders shared significant risk and protective factors for recidivism with all female offenders (Belknap 2007; Broidy and Agnew 1997; Covington and Bloom 2003; Salisbury and Van Voorhis 2009; Van Voorhis 2012). In other words, they were females first. These results add to the conceptual perplexity of both "white collar crime" and "white collar offenders." Although the data did not allow examination of the offenders' socioeconomic status prior to arrest, or analysis of the nature of their crimes, their profile characteristics and risk factors suggest that this group does not fit the empirical or public images of white collar offenders. These findings, coupled with guidance from Daly's (1989) study and feminist pathways literature (Britton 2000; Chesney-Lind 1997; Daly 1992, 1998; Eggleston and Laub 2002; Flavin 2001; Gilligan 1982; Miller and Mullins [2006]2010; Morash and Schram 2002; Salisbury and Van Voorhis 2009; Simpson et al. 2008), further suggest that most of these offenders did not commit conventional "white collar" crimes (i.e., corporate or occupational crimes for personal gain), but rather crimes emanating from relational crises or coerced by partners or spouses. This brings us back to the important issue raised by Belknap (2007) in contemplating the similar results found in Daly's (1989) study. In noting the stark differences in motives and criminality between male and female white collar offenders in that study, she questioned whether "the crimes of most of these women should really be classified under white collar offenses" (Belknap 2007:116-117).

Thus, resolving the historical confusion over what constitutes a white collar

crime is necessary to improving sentencing policies and practices for this group of first-time, and likely one-time, low risk female offenders. Also important to those policies is addressing the needs of female offenders, victims, and society in ways that comply with Congressional mandates for meeting the ends of justice, while making all reasonable efforts to ensure successful rehabilitation and reintegration of these female offenders with their families and society. To date, even the findings from the Sentencing Commission's own extensive study of recidivism among first-time offenders have been ignored in framing a sentencing structure that meets these goals for low-risk female white collar offenders (United States Sentencing Commission 2004).

As the results of this research show, many female white collar offenders came into the criminal justice system bearing some of the most significant risk factors for a pathway to recidivism: untreated mental health issues, drug and alcohol abuse, and unstable employment histories. These risks have long been recognized through the pursuit of the "advancement of knowledge of human behavior as it relates to the criminal justice process," which knowledge was legislatively authorized as the grounds for avoiding disparities and ensuring certainty and fairness in the sentencing Guidelines (Title 28, United States Code, Section 991, 1984). But many of these female white collar offenders also came into the system owning protective factors against recidivism that other female offenders would envy: first offending at an older age, being married, graduating from high school, and having little or no prior criminal history or association with former offenders. By contrast, the pathways literature would describe the "typical" female offender as being young, African-American, a single mother, having at best a high school education, lacking basic life skills, on public assistance, having been

abused as a child and adult, and having spent part of her life living on the streets (Belknap 2001, 2007; Chesney-Lind 1989; Daly 1992, 1998; Owen 1998; Salisbury and Van Voorhis 2009).

Most importantly, the current study found that being ordered to participate in substance abuse treatment was, in fact, a significant protector against recidivism for repeat female white collar offenders. Although the data was insufficient to examine the true cause and effect of this factor, it is presumed that several dynamics were at play: (1) the propensity of white collar offenders toward conformity and following the rules; (2) the convincing evidence that few white collar offenders are recidivists; and (3) their receptiveness toward drug treatment provided to them while in prison and/or on supervision. In the federal system, unlike many state systems (c.f., Sharp 2014), adequate treatment is provided for those deemed in need of it. Therefore, unlike most research that demonstrates substance abuse issues among women offenders (Deschenes et al. 2006; Owen 1998; Sharp 2014), the women in this study probably received substance abuse treatment when needed. This finding is essential to ensuring that future restructuring of the Guidelines continues to emphasize the importance of treating drug abuse, and makes a more concerted effort at treating the mental health issues so common among this group of offenders.

The face of the federal female offender has changed very little since the 1980s. What has changed are the increased numbers of females coming into the federal criminal justice system, and the increased severity of punishment they have received as a result of “equal justice” in sentencing reform. During 2013, 9,400 federal female offenders were sentenced, representing over 13% of all offenders. Nearly 24% of

those were charged with fraud, and females were in the majority of those charged with embezzlement. The average age of all female offenders was 38 years, and nearly 71% had little or no prior criminal history. Still, well after the return of judicial discretion, almost two-thirds of female fraud offenders were sentenced to prison (United States Sentencing Commission 2013a).

No Congressional mandate was issued during sentencing reform, or thereafter, warning of the inappropriateness of sentencing disparities between men and women arising from a lack of attention to specific gender characteristics. In fact, in contradiction of legislative intent to rely upon advancements in knowledge as they might relate to female offenders, Congress directed that the Guidelines and related policies be entirely neutral as to an offender's "race, sex . . . and socioeconomic status" (Title 28, United States Code, Section 994, 1984). This translated into reform policies calling for the complete disregard of an offender's "disadvantaged upbringing," or his or her "education, vocational skills, employment record, family ties and responsibilities, and community ties" in imposing a sentence (United States Sentencing Guidelines, Ch. 5, 2012; Title 28, United States Code, Section 994, 1984). Even sentencing reductions or alternatives to prison for mothers with sole responsibility for the care and support of their children had to be based on substantial and specific evidence of the loss of "essential" caretaking or financial support (United States Sentencing Guidelines, Ch. 5, 2012).

A second incongruity in Congress' reform efforts was directing that sentences other than imprisonment (i.e., probation or combinations of alternatives) were appropriate for first offenders (i.e., those with the lowest risk of recidivism who were

not convicted of crimes of violence or “otherwise serious offenses”), but then permitting the Sentencing Commission to “correct” the practice of sentencing white collar offenders to straight probation by classifying a number of “white collar” crimes as “serious offenses” that required “at least a short period of prison” for deterrence (United States Sentencing Guidelines, Para. 1A1.4(d), 2012). Not only was this illogical, but completely contrary to solid advancements in empirical knowledge concerning the white collar offender’s low risk of recidivism and harm to the community, especially those who were female.

Even sentences subject to judicial discretion after the *Booker* and *Gall* decisions have been harsh for white collar fraud offenders, with only 15% receiving terms of straight probation, and nearly half who were eligible under the Guidelines for alternative non-prison sentences receiving terms of imprisonment (United States Sentencing Commission 2013a). As judges are still required to consult the Guidelines and treat them as “advisory” prior to sentencing, these startling statistics can only be attributed to the convoluted method of applying the sentencing Guidelines to the white collar offense of conviction.

Under the current Guidelines, offenders who fall into “Zone A” are those whose offenses qualify for a sentence of zero to six months. The Guidelines allow Zone A offenders to be sentenced to straight terms of probation, or a combination of options such as probation and home or community confinement, or imprisonment, at the discretion of the judge (United States Sentencing Guidelines, Para. 5C1.1, 2012). The most common female white collar offense of embezzlement under the federal statutes carries a maximum punishment of 30 years’ imprisonment if the amount embezzled

exceeds \$1,000 (Title 18, United States Code, Section 656, 1984). The applicable sentencing Guideline for embezzlement (which also applies to most other white collar fraud offenses) increases the calculation for offenses with maximum terms of imprisonment of 20 years or more by one point to a base level offense of 7 (United States Sentencing Guidelines, Para. 2B1.1, 2012). If the amount of the embezzlement was more than \$5,000 but less than \$10,000, another 2 points are added. If that loss was more than \$30,000 but less than \$70,000, 8 points are added to the base level.

Assuming the offender does not qualify for mitigating credits under the Guidelines, such as acceptance of responsibility for pleading guilty (worth a reduction of 2 or 3 points), the offender who embezzled over \$5,000 begins with a minimum calculation of 9 points, which automatically takes her outside of Zone A and makes her ineligible for straight probation under the Guidelines (United States Sentencing Guidelines, Chapter 5, Sentencing Table, 2012). Although this process does not preclude the possibility of a sentence of straight probation from a post-*Booker* judge who exercises his or her discretion to depart from the Guidelines, according to recent statistics, that is not a common practice. In fact, during fiscal year 2013, nearly 65% of all offenders who qualified for Zone A sentences received a straight term of imprisonment, compared to only 33% who received a straight term of probation (United States Sentencing Commission 2013a).

The last several years have found broader support for alternatives to incarceration for low-risk offenders as remedies to the skyrocketing costs of confinement and the need to offer programs providing greater opportunities for rehabilitation and reintegration (United States Sentencing Commission 2009). This

was particularly true for offenders subject to the escalating fraud guidelines, as described above, which were deemed excessive and confusing (United States Sentencing Commission, *Booker* Report, Part F, 2012:59). In September 2013, the Sentencing Commission conducted a Symposium on Economic Crime, inviting notable scholars to testify regarding concerns and future directions for white collar sentencing. Statistics presented to the Symposium showed that sentencing trends under the fraud Guideline, 2B1.1, showed a troubling rise in “prison only” sentences from 2003 through 2012, increasing from 44% to nearly 62% of white collar offenders. In addition, the same trending showed a decline in “probation only” sentences for this group from 30% to 20% during the same period (United States Sentencing Commission 2013b).

Professor Ellen Podgor appeared before the Symposium on Economic Crime (United States Sentencing Commission 2013b) and testified that punishment should reflect what research clearly shows: white collar offenders are not recidivists, in general. She praised the proposal from the American Bar Association to the Sentencing Commission to include, among other things, levels of culpability in computing the 2B1.1 Guideline to reflect empirical findings that criminal intent varies significantly among white collar offenders. Podgor also emphasized the deterrent effects of the investigative process alone on these types of offenders, compared to the long-term “collateral consequences” of imprisonment on the reintegration into society of higher status professionals such as doctors and lawyers (United States Sentencing Commission 2013b). The American Bar Association’s proposal also recommended placing a cap on the 2B1.1 base offense level for crimes not found to be “otherwise serious” (United States Sentencing Commission 2013b). For non-serious crimes

committed by defendants with no criminal history points, the proposed 2B1.1 Guideline would permit sentences other than imprisonment when the Guideline calculation was no greater than 10.

Regrettably, since the Guidelines took effect in 1984, neither female offenders as a group, nor the continuing advancements in research relating to their unique risks and treatment needs, have been the focus of concern by the Sentencing Commission for the development of new punishment and treatment policies and practices. Fortunately, federal probation services have recently begun to adopt, and continue to explore, evidence-based practices that incorporate findings from social science research and promote the principles of addressing risk of recidivism, assessment and treatment of criminogenic needs predicting recidivism, and responsivity in efforts to change those risks and needs, while offenders are serving terms of community corrections (Administrative Office of the Courts 2011:2-3). A number of state prison systems are addressing the needs of female offenders and mothers to have ongoing contact with their children, and the needs for programs to assist those children while their mothers are incarcerated in avoiding the pathways to offending (Christian 2009; National Women's Law Center 2010; Texas Department of Criminal Justice 2014). The findings from the current research, however, demonstrate that the majority of these female white collar offenders should never have been sentenced to prison at all.

CHAPTER 8

CONCLUSION

One goal of this research was to expand the body of knowledge on the impact of federal sentencing policies and practices on recidivism by female white collar offenders, and to inform criminal justice decision-making to resolve conflicts between policies that ensure public safety and those intended to facilitate rehabilitation and reintegration of this group of low-risk, first-time offenders. Sentencing reform efforts aimed at “equal justice” have made punishment for white collar offenders more and more severe, while concurrently eliminating consideration of mitigating risk factors relevant to female offenders. As a result, the majority of female white collar offenders who were granted probation prior to the Guidelines becoming effective would now be much more likely to receive sentences of incarceration.

Although the data did not permit a determination of criminal motives for the population of federal female white collar offenders, the analyses in this study relied on established criminological theories for female and white collar offending, adult-onset offending, and particularly feminist pathways theory, which identified risk factors for offending that also applied to recidivism (Benson and Moore 1992; Collins et al. 2001; Daly 1989, 1992; Klenowski et al. 2011; Menard et al. 2011; Simpson et al. 2008; Steffensmeier et al. 2013). While a number of prior studies found more differences than similarities in characteristics and risk factors between those committing crimes in the streets and crimes in the “suites,” the current research found more similarities than differences. The profile of the female white collar offender in this study is considerably different than Sutherland, or even the modern American public, would

expect. Her tendencies toward having mental health and substance abuse issues, unstable employment history, no better than a high school education, associating with criminals, and being single, better describe the image of the common criminal. However, she also tended to be a first-time offender with no prior criminal history who, unlike her male counterpart, likely offended while facing a relational crisis in her family or being forced to offend by a partner or spouse. Would the public's interest in harshly punishing white collar offenders be as intense if they knew this type of female offender was frequently caught in the net of the existing punitive sentencing structure? Or would the public approve of sentencing schemes that ignored the unique risks these offenders faced, or ones that ensured that the offenders' greatest risk was a lifetime of re-incarceration? Considering the profile of the female white collar offender in this study resembles that of the general female offender (Belknap 2001, 2007; Chesney-Lind 1989; Daly 1992, 1998; Owen 1998; Salisbury and Van Voorhis 2009), and the fact that Daly's (1989) sample of female white collar offenders committed their crimes from a position of economic marginality, was Belknap (2007) correct to question whether these crimes should be classified as "white collar"? The conceptual dilemma of what constitutes white collar crime must be resolved before amendments can be made to the Guidelines that punish those crimes.

In addition to finding that the profile of the modern female white collar offender was similar in many ways to that of other female offenders, this study also found that her likelihood of recidivism was influenced by many of the same factors as other female offenders. Those factors which significantly increased recidivism for the population included having unstable employment histories and being diagnosed with mental health

issues. Factors that were protective against recidivism included being white, being older, and being ordered to pay restitution.

Differences in the frequencies and effects of certain variables on recidivism were found between first-time and repeat female white collar offenders. For instance, first-time offenders had higher levels of education and lower frequencies of female pathways factors than repeat offenders in all categories except lacking life skills, which was the same for both groups. Although educational achievement was a significant protector against recidivism for first-time offenders, it was not significant for repeat offenders. Being older was a significant protective factor for both groups. Cohabitation only increased the likelihood of recidivism for repeat offenders, while being single was not significant for either group. Being referred for drug treatment was not significant for first-time offenders, but was a strong protective factor against recidivism for repeat offenders. Each of these findings is important to the examination of appropriate criminal justice policies for prosecution, sentencing, and rehabilitation for female white collar offenders.

The first step toward correcting policies that support harsh punishment of white collar offenders should be implementation of a “first-offender” sentencing guideline, as once contemplated by Congress. The Sentencing Commission’s own recidivism study of first offenders could serve as the foundation for the policy and practice, supplemented by the current study and the extensive research on first offenders and adult-onset offenders cited here. This guideline should favor sentences of straight probation; be independent of any existing offense-related guidelines, especially 2B1.1; and be considered primary for all first offenders before applying specific offense

characteristics to the calculation. In a time when prison overcrowding is truly at crisis level, such a guideline could be considered for retroactive application to first offenders already serving terms of imprisonment that were sentenced under more punitive guidelines, as will be done in 2015 with the revised drug quantity Guidelines calculations.

With respect to creating gender-responsive guidelines, there is no shortage of empirical evidence on successful policies and practices in women's corrections (Bloom et al. 2003; Covington 1998a, 1998b; Covington and Bloom 2003). Those cited from the 1995 American Correctional Association Policy Statement and from the National Resource Center on Justice Involved Women address many of the risk factors of recidivism found in women in this study, and provide ample guidance on the best ways to implement gender-responsive policies in the federal criminal justice system. Failing's (2005) restorative justice model offered one approach to punishing female offenders that would serve as an alternative to incarceration, based on an "ethical understanding of crime," which would be particularly appropriate for female white collar offenders. This approach also recognized the importance of women's relationality and ethic of care in the risk of recidivism, and their need as both perpetrators and victims to be "restored" to the community by "mending the relationship between victim and offender" (Failing 2005:110).

Deschenes et al. (2006) proposed that reentry programs emphasizing treatment and social services would be more successful than those focused on surveillance for female offenders on community supervision. Covington (1998b) encouraged community-based sanctions without imprisonment that targeted female pathways to

crime, wherein women are taught to value life. The literature tells us that the most vulnerable time for a female offender to reoffend is the first year after release from prison. This should be the time frame targeted for success for reentry programs (Deschenes et al. 2006).

Several important findings from the current study are worthy of further investigation and consideration in improved sentencing structures for female white collar offenders:

(1) The protective effect of being assessed as needing drug treatment on the population and on repeat female white collar offenders can likely be explained by the positive outcomes of drug treatment while in custody or on supervision. The data showed higher frequencies of drug abuse by repeat offenders, indicating that earlier attempts at treatment, if any, were not as successful for those with higher risks of recidivism. However, for those who were susceptible to the treatment, it had a significant negative effect on reoffending. There is some research that suggests that many women who are incarcerated more than once seem to benefit more from the second incarceration (Girshick 2003; Sharp 2014), and that may be a factor in the current study.

(2) Being ordered to pay restitution as part of the sentence was a strong protective factor against recidivism for all female white collar offenders in this study. The significance of having the opportunity to make their victims whole and account for their crimes was clearly important to the sample offenders' ethic of care, and further supports the theory of restorative justice for both victim and offender. However, as suggested by Schanzenbach and Yaeger (2006), these sentences should

not only be considered in lieu of incarceration, but become available to all offenders, and in amounts proportionate to their abilities to pay.

(3) RPI scores, which are intended to predict risk of recidivism, proved very accurate for first-time female white collar offenders, but less so for repeat offenders, whose mean RPI score indicated a relatively low risk of reoffending. Improvements in gender-specific risk assessments should be pursued as part of reform in punishment and supervision.

Future research that builds upon the current study by focusing on data that are rich in female pathways factors is encouraged. For example, examination of the outcomes of children of incarcerated female white collar offenders would shed light on whether the same vulnerabilities and risks are present for them as for the children of other types of female offenders. Analysis of data containing criminal motivations, offender's pre-arrest socioeconomic status, nature of the offender's employment at the time of the offense, offender histories of victimization, the actual nature of the offense(s) committed and whether they were at the direction of a spouse or partner, would be invaluable to presenting a complete profile of the female white collar offender and the full impact of federal sentencing and supervision policies. The current results also indicate the need to examine the relationship between race and recidivism for white collar offenders, and what racially-correlated factors, if any, contribute to the higher incidence of reoffending by non-whites. This research should also include a look at the types of offenses repeat female white collar offenders commit, and whether they are more or less likely to be related to occupation. Finally, research comparing men and women white collar offenders could be very informative.

Another line of research could evaluate the impact of the inclusion or omission of gender-related factors in the sentencing structure. For instance, the ability to compare judicial explanations or probation recommendations for the sentence imposed would reveal the importance of factors weighed in the actual sentencing decision, and distinguish frequencies of applying factors already permitted in the Guidelines to those of factors discouraged for consideration in the Guidelines, such as family ties and responsibilities, disadvantaged upbringing, status of the victim(s), and other unique risks or protective factors for the individual offender.

Finally, the availability of data on the offender's experiences during incarceration would enrich the findings as to offender outcomes during supervision. Information on the offender's abilities to acclimate to the prison environment, the nature of disciplinary actions taken, changes to or withdrawal from prison treatment programs, and personal and relational crises that may have occurred during incarceration would be important to further evaluating successful or unsuccessful outcomes during supervision. With respect to all future research, examination should focus on female white collar offenders who were sentenced in the federal system after implementation of the *Gall* guidance to sentencing courts to provide comparison to those in the current study who were sentenced when the Guidelines were mandatory.

It is time to return to the days of Justice Black, when the punishment was meant to "fit the offender and not merely the crime" (*Williams v. New York*: 247-248). The Sentencing Commission's emphasis on eliminating sentencing disparities for "like" crimes was laudable when it came to murder, theft, or kidnapping, but designating the myriad white collar crimes punishable under Guideline 2B1.1 as "like" was virtually

impossible. Even in the case of a male and female each committing the crime of embezzlement, is the crime by a male to unlawfully obtain money to buy a luxury car a “like” crime to the female unlawfully obtaining money to pay the medical bills of her dying child? Further, the dollar amounts for embezzlement are so low as to equate women’s lower levels of theft with the higher amounts often stolen by men.

As the American Bar Association proposed, Guideline 2B1.1 should incorporate levels of culpability and motive, consider gendered risks and needs as done prior to sentencing reform, and offer straight probation to low-risk offenders with low Guidelines calculations. These amendments would finally provide the opportunity to “season mercy with justice” for female white collar offenders who, from an ethic of care, made a “choice between evils” (Gilligan 1982, 1985). Recognition of harsh white collar sentencing practices is coming to light, and movement toward change is afoot. Recognition of harsh female offender sentencing practices, however, is yet to be revealed.

REFERENCES

- Acker, Joan. 1990. "Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations." *Gender and Society* 4(2):139-158.
- Acker, Joan. 1992. "Gendering Organizational Theory." Pp. 248-261 in *Gendering Organizational Analysis*, edited by A. J. Mills and P. Tancred. London: Sage Ltd.
- Administrative Office of the United States Courts, Office of Probation and Pretrial Services. 2011. "An Overview of the Federal Post Conviction Risk Assessment."
- Agnew, Robert. 1985. "A Revised Strain Theory of Delinquency." *Social Forces* 64:151-167.
- Agnew, Robert. 1992. "Foundation for a General Strain Theory of Crime and Delinquency." *Criminology* 30:47-87.
- American Correctional Association. 1995. *Public Correctional Policy on Female Offender Services*.
- Bales, William D. and Alex R. Piquero. 2012. "Assessing the Impact of Imprisonment on Recidivism." *Journal of Experimental Criminology* 8(1):71-101.
- Belknap, Joanne. 2001. *The Invisible Woman: Gender, Crime and Justice*. 2nd ed. Belmont, California: Wadsworth.
- Belknap, Joanne. 2007. *The Invisible Woman: Gender, Crime and Justice*. 3rd ed. Wadsworth: Belmont, California.
- Belknap, Joanne, Melissa Dunn and Kristi Holsinger. 1997. *Moving Toward Juvenile Justice and Youth-serving Systems that Address the Distinct Experience of the Adolescent Female*. A Report to the Governor. Office of Criminal Justice Services, Columbus, OH.
- Benson, Michael L. and Francis T. Cullen. 1988. "The Special Sensitivity of White-Collar Offenders to Prison: A Critique and Research Agenda." *Journal of Criminal Justice* 16(3): 207-215.
- Benson, Michael L. and Elizabeth Moore. 1992. "Are White-Collar and Common Offenders the Same? An Empirical and Theoretical Critique of a Recently Proposed General Theory of Crime." *Journal of Research in Crime and Delinquency* 29(3):251-272.

- Bloom, Barbara, Barbara Owen and Stephanie Covington. 2003. "Gender-responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders." Washington, D.C.: National Institute of Corrections.
- Boss, Maria S. and Barbara Crutchfield George. 1992. "Challenging Conventional Views of White Collar Crime." *Criminal Law Bulletin* 28:32-57.
- Braithwaite, John. 1985. "White Collar Crime." *Annual Review of Sociology* 11:1-25.
- Brame, Robert, Michael G. Turner and Ray Paternoster. 2010. "Missing Data Problems in Criminological Research." Pp. 273-288 in *Handbook of Quantitative Criminology*, edited by Alexis Russell Piquero and David Weisburd. New York: Springer.
- Britton, Dana M. 2000. "Feminism in Criminology: Engendering the Outlaw." *The Annals of the American Academy of Political and Social Science* 571(1):57-76.
- Broidy, Lisa and Robert Agnew. 1997. "Gender and Crime: A General Strain Theory Perspective." *Journal of Research in Crime and Delinquency* 34:275-306.
- Bureau of Prisons. 2013. "Institutions Housing Female Offenders." Retrieved September 20, 2013 (http://www.bop.gov/locations/female_facilities.jsp).
- Cadigan, Timothy P. 2000. "PACTS." *Federal Probation* 65:25-30.
- Carlen, Pat and Chris Tchaikovsky. 1985. "Women in Prison." Pp. 182-186 in *Criminal Women*, edited by Pat Carlen. Cambridge: Polity Press.
- Chesney-Lind, Meda. 1989. "Girls' Crime and Woman's Place: Toward a Feminist Model of Female Delinquency." *Crime and Delinquency* 35(1): 5-29.
- Chesney-Lind, Meda. 1997. *The Female Offender: Girls, Women, and Crime*. Thousand Oaks, California: Sage.
- Christian, Steve. 2009. "Children of Incarcerated Parents." National Conference of State Legislatures.
- Clear, Todd R. 1996. "Backfire: When Incarceration Increases Crime." P. 12 in *The Unintended Consequences of Incarceration*, Note 62. Vera Institute of Justice.
- Clinard, M. B., & Quinney, R. 1973. *Criminal Behavior Systems: A Typology*. New York: Holt, Rinehart and Winston.

- Cobbina, Jennifer E., Beth M. Huebner and Mark T. Berg. 2012. "Men, Women, and Postrelease Offending: An Examination of the Nature of the Link Between Relational Ties and Recidivism." *Crime and Delinquency* 58(3): 331-361.
- Coleman, James William. 1987. "Toward an Integrated Theory of White-Collar Crime." *The American Journal of Sociology* 93(2):406-439.
- Coleman, James William. 2002. *The Criminal Elite. Understanding White-Collar Crime*. New York: Worth Publishers.
- Coll, Cynthia J. Garcia, Janet L. Surrey, Phyllis Buccio-Notaro and Barbara Molla. 1998. "Incarcerated Mothers: Crimes and Punishments." Pp. 255-274 in *Mothering Against the Odds: Diverse Voices of Contemporary Mothers*, edited by C.G. Coll, J. Surrey and K. Weingarten. New York: Guilford.
- Collins, J.M., P.M. Muchinsky, D.J. Mundfrom and M.D. Collins. 2001. "Integrity in the Corporate Suite: Predictors of Female Frauds." Research Grant, Department of the Navy, Chief of Naval Research. Retrieved May 15, 2010 (<http://www.cj.msu.edu/~faculty/collinsintegrity.html>).
- Covington, Stephanie S. 1998a. Women in Prison: Approaches in the Treatment of Our Most Invisible Population. *Women and Therapy Journal* 21(1):141-155.
- Covington, Stephanie S. 1998b. "The Relational Theory of Women's Psychological Development: Implications for the Criminal Justice System." Pp. 113-131 in *Female offenders: Critical perspectives and effective interventions*, edited by Ruth T. Zaplin. Gaithersburg, MD: Aspen Publishers.
- Covington, Stephanie S. and Barbara E. Bloom. 2003. "Gendered Justice: Women in the Criminal Justice System." Pp. 3-24 in *Gendered Justice: Addressing Female Offenders*, edited by Barbara E. Bloom. Durham, NC: Carolina Academic Press.
- Cressey, Donald R. 1964. *Delinquency, Crime, and Differential Association*. The Hague, Netherlands: Martinus Nijhoff.
- Croall, Hazel. 2001. "Conceptualizing White Collar Crime." Pp. 1-19 in *Understanding White Collar Crime*. Buckingham and Philadelphia: Open University Press.
- Cullen, Francis T., Cheryl Lero Jonson and Daniel S. Nagin. 2011. "Prisons Do Not Reduce Recidivism." *The Prison Journal*, Supplement to 91(3): 48S-65S.
- Daly, Kathleen. 1989. "Gender and Varieties of White-Collar Crime." *Criminology* 27(4):769-794.

- Daly, Kathleen. 1992. "Women's Pathways to Felony Court: Feminist Theories of Lawbreaking and Problems of Representation." *Southern California Review of Law and Women's Studies* 2: 11-52.
- Daly, Kathleen. 1994. *Gender, Crime and Punishment: Is Justice Blind or are Men and Women Treated Differently by the Courts?* New Haven, CT: Yale University Press.
- Daly, Kathleen. 1998. "Gender, Crime, and Criminology." Pp. 85-108 in *The Handbook of Crime and Punishment*, edited by Michael Tonry. Oxford: Oxford University Press.
- Daly, Kathleen and Meda Chesney-Lind. 1988. "Feminism and Criminology." *Justice Quarterly* 5:497-535.
- Deschenes, Elizabeth Piper, Barbara Owen and Jason Crow. 2006. "Recidivism among female prisoners: Secondary Analysis of the 1994 BJS Recidivism Data Set." *Final Report, National Institute of Justice, U.S. Department of Justice*.
- Durkheim, Emile. (1895). 1982. "The Rules of Sociological Method." Pp. 31-163 in *Durkheim: The Rules of Sociological Method and Selected Texts on Sociology and Its Method*. New York: Simon and Schuster.
- Durkheim, Emile. 1951. *Suicide*. New York: Free Press.
- Edelhertz, Herbert. 1970. "The Nature, Impact and Prosecution of White Collar Crime." Washington, D.C.: National Institute of Law Enforcement and Criminal Justice. United States Printing Office.
- Eggleston, E. P. and J. H. Laub. 2002. "The Onset of Adult Offending: A Neglected Dimension of the Criminal Career." *Journal of Criminal Justice* 30(6):603-622.
- Elder, Glen H. (1985). "Perspectives on the Life Course." Pp. 23-49 in *Life Course Dynamics: Trajectories and Transitions, 1968-1980*, edited by Glen H. Elder. Ithaca, NY: Cornell University Press.
- Failing, Marie A. 2005. "Lessons Unlearned: Women Offenders, The Ethics of Care, and the Promise of Restorative Justice." *Fordham Urban Law Journal* 33(2):101-137.
- Faith, Karlene. 1993. *Unruly Women: The Politics of Confinement and Resistance*. Vancouver: Press Gang.

- Federal Bureau of Investigation. 2013. "White-Collar Crime: Lying, Cheating, and Stealing." Retrieved July 13, 2013 (http://www.fbi.gov/about-us/investigate/white_collar).
- FindLaw. 2014. "Suspended Sentences." Retrieved October 5, 2014 (http://files.findlaw.com/pdf/criminal/criminal.findlaw.com_criminal-procedure_suspended-sentences.pdf).
- Flavin, Jeanne. 2001. "Feminism for the Mainstream Criminologist: An Invitation." *Journal of Criminal Justice* 29:71-285.
- Friedrichs, David O. 2007. *Trusted Criminals: White Collar Crime in Contemporary Society*. 3rd ed. Belmont, California: Thomson Wadsworth.
- Gall v. United States*, 552 U.S. 38 (2007).
- Geis, Gilbert. 1991. "White-Collar Crime-What Is It?" *Current Issues in Criminal Justice* 3:9-24.
- Gendreau, Paul, Tracy Little and Claire Goggin. 1996. "A Meta-Analysis of the Predictors of Adult Recidivism: What Works!" *Criminology* 34: 575-607.
- Gilligan, Carol. 1982. *In a Different Voice: Psychological Theory and Women's Development*. Harvard University Press.
- Gilligan, Carol. 1985. "In a Different Voice: Women's Conceptions of Self and Morality." In *The Future of Difference*, edited by Hester Eisenstein and Alice Jardine. New Brunswick, NJ: Rutgers University Press. Retrieved July 10, 2013 (<http://sfonline.barnard.edu/sfxxx/documents/gilligan.pdf>).
- Gilligan, Carol. 1995. "Hearing the Difference: Theorizing Connection." *Hypatia* 10(2), 120-127.
- Gilligan, Carol. 2011. "Looking Back to Look Forward: Revisiting *In a Different Voice*." *Classics@*, Issue 9, "Defense Mechanisms." http://nrs.harvard.edu/urn-3:hul.ebook:CHS_Classicsat.
- Girshick, Lori. 2003. "Leaving Stronger: Programming for Release." In Susan F. Sharp (ed.) *The Incarcerated Woman: Rehabilitative Programming in Women's Prisons*. Upper Saddle River, NJ: Prentice-Hall.
- Gottfredson, Michael R. and Travis Hirschi. 1990. "The Nature of Criminality: Low Self-Control." Pp. 85-122 in *A General Theory of Crime*. Stanford, California: Stanford University Press.

- Gottschalk, Petter. 2010. "Theories of Financial Crime." *Journal of Financial Crime* 17(2):210-222.
- Hagan, John. 1980. "The Legislation of Crime and Delinquency: A Review of Theory, Method, and Research." *Law and Society Review*:603-628.
- Hannah-Moffat, Kelly. 1999. "Moral Agent or Actuarial Subject: Risk and Canadian Women's Imprisonment." *Theoretical Criminology* 3(1):71-94.
- Harris, Patricia M. 2011. "The First-Time Adult-Onset Offender Findings From a Community Corrections Cohort." *International Journal of Offender Therapy and Comparative Criminology* 55(6): 949-981.
- Hawkins, Darnell F. 1980. "Perceptions of Punishment for Crime." *Deviant Behavior* 1(2):193-215.
- Hirschi, Travis and Michael Gottfredson. 1987. "Causes of White Collar Crime." *Criminology* 25(4):949-974.
- Holtfreter, Kristy. 2005. "Is Occupational Fraud 'Typical' White-Collar Crime? A Comparison of Individual and Organizational Characteristics." *Journal of Criminal Justice* 33: 353-365.
- Huebner, Beth M., Christina DeJong and Jennifer Cobbina. 2010. "Women Coming Home: Long-Term Patterns of Recidivism." *Justice Quarterly* 27(2): 225-254.
- Javdani, S., N. Sadeh and E. Verona. 2011. "Gendered Social Forces: A Review of the Impact of Institutionalized Factors on Women and Girls' Criminal Justice Trajectories." *Psychology, Public Policy, and Law* 17(2):161-211.
- Johnson, James L., Christopher T. Lowenkamp, Scott W. VanBenschoten and Charles R. Robinson. 2011. "The Construction and Validation of the Federal Post Conviction Risk Assessment (PCRA)." *Federal Probation* 75:16.
- Klein, Dorie. 1980. "The Etiology of Female Crime: A Review of Literature." In *Women, Crime and Justice*, edited by Susan K. Datesman and Frank R. Scarpitti. New York: Oxford University Press.
- Klenowski, Paul M., Heith Copes and Christopher W. Mullins. 2011. "Gender, Identity, and Accounts: How White Collar Offenders Do Gender When Making Sense of Their Crimes." *Justice Quarterly* 28(1): 46-69.

- Langton, Lynn and Nicole Leeper Piquero. 2007. "Can General Strain Theory Explain White-Collar Crime? A Preliminary Investigation of the Relationship between Strain and Select White-Collar Offenses." *Journal of Criminal Justice* 35: 1-15.
- Lehmann, Jennifer M. 1995. "Durkheim's Theories of Deviance and Suicide: A Feminist Reconsideration." *American Journal of Sociology* 100(4): 904-930.
- Levi, Michael. 2006. "The Media Construction of Financial White-Collar Crimes." *British Journal of Criminology* 46(6): 1037-1057.
- Lorber, Judith. 1994. "'Night to his Day': The Social Construction of Gender." Pp. 13-36 in *Paradoxes of Gender*. New Haven, CT: Yale University Press.
- MacKinnon, Catharine A. 1987. *Feminism Unmodified: Discourse on Life and Law*. London: Harvard University Press.
- Maldonado, Solangel. 2006. "Recidivism and Paternal Engagement." *Family Law Quarterly* 40:191-196.
- Martin, Patricia Yancey. 2004. "Gender as Social Institution." *Social Forces* 82(4):1249-73.
- Mason, Karen A. 2007. "Punishment and Paperwork: White-Collar Offenders Under Community Supervision." *American Journal of Criminal Justice* 31:23-26.
- McClellan, Dorothy Spektorov. 1994. "Disparity in the Discipline of Male and Female Inmates in Texas Prisons." *Women and Criminal Justice* 5(2):71-97.
- Mears, Daniel P., Joshua C. Cochran and William D. Bales. 2012. "Gender Differences in the Effects of Prison on Recidivism." *Journal of Criminal Justice* 40: 370-78.
- Menard, Scott, Robert G. Morris, Jurg Gerber and Herbert C. Covey. 2011. "Distribution and Correlates of Self-reported Crimes of Trust." *Deviant Behavior* 32(10):877-917.
- Messerschmidt, James W. 1993. "Structured Action and Gendered Crime." Ch. 3 from *Masculinities and Crime: Critique and Reconceptualization of Theory*. Lanham, Maryland: Rowman and Littlefield Publishers, Inc.
- Miller, Eleanor. 1986. *Street Woman*. Philadelphia: Temple University Press.

- Miller, Jody and Christopher W. Mullins. [2006] 2010. "The Status of Feminist Theories in Criminology." Pp. 217-250 in *Taking Stock: The Status of Criminological Theory*, edited by Francis T. Cullen, John Paul Wright and Kristie R. Blevins. New Brunswick, NJ: Transactions Publishers.
- Morash, M. and P. J. Schram. 2002. *The Prison Experience: Special Issues of Women in Prison*. Prospect Heights, IL: Waveland Press, Inc.
- Nagel, Ilene H. and Barry L. Johnson. 1994. "The Role of Gender in a Structured Sentencing System: Equal Treatment, Policy Choices, and the Sentencing of Female Offenders Under the United States Sentencing Guidelines." *Journal of Criminal Law and Criminology* 85:1:181-221.
- Nagin, Daniel S., Francis T. Cullen, and Cheryl Lero Jonson. 2009. "Imprisonment and Reoffending." Pp. 115-200 in *Crime and Justice: A Review of Research*, edited by Michael Tonry. Chicago: University of Chicago Press.
- National Women's Law Center. 2010. "Mothers Behind Bars." The Rebecca Project for Human Rights. Retrieved August 9, 2014 (<http://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf>).
- Ney, Becki, Rachelle Ramirez and Marilyn Van Dieten. 2012. "Ten Truths That Matter When Working With Justice Involved Women." National Resource Center on Justice Involved Women.
- Owen, Barbara. 1998. *In the Mix: Struggle and Survival in a Women's Prison*. SUNY Press: Albany, NY.
- Pager, Devah. 2003. "The Mark of a Criminal Record." *American Journal of Sociology* 108: 937-975.
- Piquero, Nicole Leeper and Michael L. Benson. 2004. "White-Collar Crime and Criminal Careers: Specifying a Trajectory of Punctuated Situational Offending." *Journal of Contemporary Criminal Justice* 20(2):148-165.
- Pogrebin, M. R., E. D. Poole and R. M. Regoli. 1986. "Stealing Money: An Assessment of Bank Embezzlers." *Behavioral Sciences and the Law* 4(4):481-490.
- Poortinga, Ernest, Craig Lemmen and Michael D. Jibson. 2006. "A Case Control Study: White-Collar Defendants Compared with Defendants Charged with Other Nonviolent Theft." *Journal of the American Academy of Psychiatry Law* 34(1):82-89.

- Pritikin, Martin H. 2008. "Is Prison Increasing Crime?" *Wisconsin Law Review* 6:1049-1108.
- Ragatz, Laurie and William Fremouw. 2010. "A Critical Examination of Research on the Psychological Profiles of White-collar Criminals." *Journal of Forensic Psychology Practice*, 10(5), 373-402.
- Restorative Justice Online. 2014. "Restorative Justice Processes." Retrieved October 5, 2014 (<http://restorativejustice.org/press-room/05rjprocesses>).
- Rosenmerkel, Sean P. 2001. "Wrongfulness and Harmfulness as Components of Seriousness of White-Collar Offenses." *Journal of Contemporary Criminal Justice* 17:4:308-327.
- Rothman, Martin and Robert F. Gandossy. 1982. "Sad Tales: The Accounts of White-Collar Offenders and the Decision to Sanction." *Pacific Sociological Review* 4:449-473.
- Salisbury, Emily J. and Patricia Van Voorhis. 2009. "Gendered Pathways: A Quantitative Investigation of Women Probationers' Paths to Incarceration." *Criminal Justice and Behavior* 36(6): 541-566.
- Salisbury, Emily, Patricia Van Voorhis, and Georgia Spiropoulos. 2009. "The Predictive Validity of a Gender Responsive Risk/Needs Assessment." *Crime & Delinquency* 55:550-585.
- Salisbury, Emily J., Patricia Van Voorhis and Emily Wright. 2006. *Construction and Validation of a Gender Responsive Risk/Needs Instrument for Women Offenders in Missouri and Maui*. Paper presented at the annual conference of the American Society of Criminology, Los Angeles.
- Sampson, Robert. 1987. "Urban Black Violence: The Effect of Male Joblessness and Family Disruption." *American Journal of Sociology* 93: 348-382.
- Sampson, Robert and John Laub. 1990. "Crime and Deviance over the Life Course: The Salience of Adult Social Bonds." *American Sociological Review* 55:609-627.
- Sampson, Robert and John Laub. 2003. "Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70." *Criminology* 41(3):555-592.
- Sarbanes-Oxley Act*, Public Law 107-204, 116 U.S. Statutes at Large 745 (2002).

- Schanzenbach, Max M. and Michael L. Yaeger. 2006. "Prison Times, Fines, and Federal White-Collar Criminals: The Anatomy of a Racial Disparity." *Journal of Criminal Law and Criminology* 96(2):757-793.
- Schoepfer, Andrea, Stephanie Carmichael and Nicole Leeper Piquero. 2007. "Do Perceptions of Punishment Vary between White-collar and Street crimes?" *Journal of Criminal Justice* 35:151-163.
- Schur, Edwin. 1984. *Labeling Women Deviant: Stigma and Social Control*. New York: Random House.
- Sharp, Susan F. 2014. *Mean Lives, Mean Laws: Oklahoma's Women Prisoners*. New Brunswick, NJ: Rutgers University Press.
- Sharp, Susan F. and Susan T. Marcus-Mendoza. 2001. "It's a Family Affair: Incarcerated Women and their Families." *Women and Criminal Justice* 12:21-49.
- Sharp, Susan F., Susan T. Marcus-Mendoza, Robert G. Bentley, Debra B. Simpson and Sharon R. Love. 1999. "Gender Differences in the impact of incarceration on the children and families of drug offenders." Pp. 217-246 in *Interrogating Social Justice*, edited by Marilyn Corsianos and Kelly Train. Toronto: Canadian Scholars' Press.
- Simpson, Sally S. 1989. "Feminist Theory, Crime and Justice." *Criminology* 27(4): 605-631.
- Simpson, Sally S. 2010. "Making Sense of White-collar Crime: Theory and Research." *Ohio State Journal of Criminal Law* 8:481-502.
- Simpson, Sally S., Jennifer L. Yahner and Laura Dugan. 2008. "Understanding Women's Pathways to Jail: Analysing the Lives of Incarcerated Women." *The Australian and New Zealand Journal of Criminology* 41(1): 84-108.
- Smith, Douglas A. and Raymond Paternoster. 1987. "The Gender Gap in Theories of Deviance: Issues and Evidence." *Journal of Research in Crime and Delinquency* 24:140-172.
- Smith, Ruth L. 1988. "Moral Transcendence and Moral Space in the Historical Experiences of Women." *Journal of Feminist Studies in Religion* 4(2): 21-37.
- Snider, Laureen. 2003. "Constituting the Punishable Woman. Atavistic Man Incarcerates Postmodern Woman." *British Journal of Criminology* 43(2):354-378.

- Sparks, Richard F. 1979. "'Crime as Business' and the Female Offender." Pp. 171-179 in *The Criminology of Deviant Women*, edited by Freda Adler and Rita J. Simon. Boston: Houghton Mifflin.
- Steffensmeier, Darrell. 1983. "Sex-Segregation in the Underworld: Building a Sociological Explanation of Sex Differences in Crime." *Social Forces* 61:1010-1032.
- Steffensmeier, Darrell. 1989. "On the Causes of 'White-Collar' Crime: An Assessment of Hirschi and Gottfredson's Claims." *Criminology* 27:2:345-358.
- Steffensmeier, Darrell, and Emile Allan. 1995. "Criminal Behavior: Gender and Age." Pp. 83-113 in *Criminology: A Contemporary Handbook*, edited by Joseph F. Sheley. Belmont, California: Wadsworth.
- Steffensmeier, Darrell and Emile Allan. 1996. "Gender and Crime: Toward a Gendered Theory of Female Offending." *Annual Review of Sociology* 22:459-87.
- Steffensmeier, Darrell and Dana Haynie. 2000. "Gender, Structural Disadvantage, and Urban Crime: Do Macrosocial Variables Also Explain Female Offending Rates?" *Criminology* 38(2): 403-434.
- Steffensmeier, Darrell and Jennifer Schwartz. 2004. "Contemporary Explanations of Women's Crime." Pp. 113-126 in *The Criminal Justice System and Women: Offenders, Prisoners, Victims and Workers*. 3rd ed., edited by Barbara Raffel Price and Natalie J. Sokoloff. Boston: McGraw Hill.
- Steffensmeier, Darrell, Jennifer Schwartz and Michael Roche. 2013. "Gender and Twenty-First-Century Corporate Crime: Female Involvement and the Gender Gap in Enron-Era Corporate Frauds." *American Sociological Review* 78(3):448-476.
- Steffensmeier, Darrell, Jeffery Ulmer and John Kramer. 1998. "The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male." *Criminology* 36.4 (1998): 763-798.
- Stuart, Bryan and Janet Brice-Baker. 2004. "Correlates of Higher Rates of Recidivism in Female Prisoners: An Exploratory Study." *Journal of Psychiatry and Law* 32:29-70.
- Sutherland, Edwin H. 1940. "White-Collar Criminality." *American Sociological Review* 5(1):1-12.

- Sutherland, Edwin H. 1941. "Crime and Business." *Annals of the American Academy of Political and Social Science* 5:112-118.
- Sutherland, Edwin H. 1944. "Is 'White Collar Crime' Crime?" *American Sociological Review* 10(2):132-139.
- Texas Department of Criminal Justice. 2014. "Baby and Mother Bonding Initiative (BAMBI)." Rehabilitation Programs Division. Retrieved August 9, 2014 (http://www.tdcj.state.tx.us/divisions/rpd/rpd_bambi.html).
- Tronto, Joan C. 1987. "Beyond Gender Difference to a Theory of Care." *Signs* 12(4): 644-663.
- United States v. Booker*, 543 U.S. 220 (2005).
- United States Code. 1984. Titles 18 and 28.
- United States Code. 2010. Title 18.
- United States Sentencing Commission. 2003. "Report to the Congress on Downward Departures from the Federal Sentencing Guidelines." October 27, 2003.
- United States Sentencing Commission. 2004. "Recidivism and the 'First Offender.'"
- United States Sentencing Commission. 2009. Regional Hearings on the Twenty-Fifth Anniversary of the Passage of the Sentencing Reform Act of 1984. Nov. 19, 2009. Austin, TX.
- United States Sentencing Commission. 2010. *Federal Offenders Sentenced to Supervised Release*. July 2010.
- United States Sentencing Commission. 2012. "Report on the Continuing Impact of *United States v. Booker* on Federal Sentencing."
- United States Sentencing Commission. 2013a. *2013 Sourcebook of Federal Sentencing Statistics*.
- United States Sentencing Commission. 2013b. Symposium on Economic Crime. September 2013. New York, NY.
- United States Sentencing Commission Symposium on Economic Crime. 2013. New York, NY.
- United States Sentencing Guidelines. 2003. *Guidelines Manual*.

- United States Sentencing Guidelines. 2010. *Guidelines Manual*.
- United States Sentencing Guidelines. 2012. *Guidelines Manual*.
- Van Nostrand, Marie and Gena Keebler. 2009. "Pretrial Risk Assessment in the Federal Court." *Federal Probation* 73(2):3-29.
- Van Slyke, Shanna and William D. Bales. 2012. "A Contemporary Study of the Decision to Incarcerate White-Collar and Street Property Offenders." *Punishment & Society* 14(2):217-246.
- Van Voorhis, Patricia. 2012. "On Behalf of Women Offenders: Women's Place in the Science of Evidence-Based Practice." *Criminology and Public Policy* 11(2):111-145.
- Van Voorhis, Patricia, Emily M. Wright, Emily Salisbury, and Ashley Bauman. 2010. "Women's Risk Factors and their Contributions to Existing Risk/Needs Assessment: The Current Status of Gender Responsive Assessment." *Criminal Justice and Behavior* 34:261-288.
- Vreeke, G. J. 1991. "Gilligan on Justice and Care: Two Interpretations." *Journal of Moral Education* 20(1): 33-46.
- Waldfoegel, Joel. 1994. "The Effect of Criminal Conviction on Income and the Trust 'Reposed in the Workmen.'" *The Journal of Human Resources* 29(1): 62-81.
- Walker, Lawrence J. 1984. "Sex Differences in the Development of Moral Reasoning: A Critical Review." *Child Development* 55: 677-691.
- Walker, Lawrence J., B. de Vries and S.D. Trevethan. 1987. "Moral Stages and Moral Orientations in Real-Life and Hypothetical Dilemmas." *Child Development* 58: 842-858.
- Warr, Mark. 1989. "What is the Perceived Seriousness of Crimes?" *Criminology* 27:795-821.
- Weisburd, David, Stanton Wheeler, Elin Waring and Nancy Bode. 1991. *Crimes of the Middle Class: White-Collar Offending in the Federal Courts*. New Haven, CT: Yale University Press.
- Weisburd, David, Elin Waring and Ellen Chayet. 2006. "Specific Deterrence in a Sample of Offenders Convicted of White Collar Crimes." *Criminology* 33(4): 587-607.

- Weisburd, David and Elin Waring. 2001. *White-collar Crime and Criminal Careers*. Cambridge University Press.
- West, Candace and Sarah Fenstermaker. 1995. "Doing difference." *Gender & Society* 9(1):8-37.
- Wheeler, Stanton. 1992. "The Problem of White-Collar Crime Motivation." In K. Schlegel and D. Weisburd (Eds.). *White-Collar Crime Reconsidered* (pp. 108-123). Boston: Northeastern University Press.
- Wheeler, Stanton, David Weisburd and Nancy Bode. 1982. "Sentencing the White-Collar Offender: Rhetoric and Reality." *American Sociological Review* 47: 641-659.
- Wheeler, Stanton, David Weisburd, Elin Waring and Nancy Bode. 1988. "White Collar Crimes and Criminals." *American Criminal Law Review* 25:331-57.
- Williams v. New York*, 337 U.S. 241 (1949).
- Woods, Cindy J.P. 1996. "Gender Differences in Moral Development and Acquisition: A Review of Kohlberg's and Gilligan's Models of Justice and Care." *Social Behavior and Personality* 24(4): 375-383.
- Zietz, Dorothy. (1981). *Women Who Embezzle or Defraud: A Study of Convicted Felons*. New York: Praeger.
- Zimring, Franklin E. 1981. "Kids, groups and crime: Some implications of a well-known secret." *The Journal of Criminal Law and Criminology* 72(3):867-885.

APPENDIX 1

TABLES

Table 1. Bivariate Correlations for Study Variables for All Female White Collar Offenders (FWCOs)

	Age	Alcohol abuse	Cohabiting	Criminal associates	Drug abuse	Education	Employment-related	Fine	Incarcerated	Life skills	Married	Mental health	Prison incidents	Recidivism	Restitution	RPI	Single	Unstable employment	White
Age	1.000	-.059*	-.061*	-.097*	-.122*	.173*	.084*	.018*	.048*	.014	.204*	.074*	-.013	-.127*	.003	-.374*	-.170*	-.031*	.169*
Alcohol abuse	-.059*	1.000	.030*	.018*	.528*	-.066*	-.028*	.015	.032*	.045*	-.060*	.074*	.006	-.012	.173*	.171*	.044*	.044*	-.007
Cohabiting	-.061*	.030*	1.000	.028*	.026*	-.027*	-.026*	.005	-.013	-.011	-.174*	.002	-.009	.019*	.022*	.041*	-.290*	-.004	.031*
Criminal associates	-.097*	.018*	.028*	1.000	.067*	-.068*	-.002	-.005	.042*	-.020*	-.030*	.013	.019*	.054*	-.042*	.154*	.017	.099*	-.040*
Drug abuse	-.122*	.528*	.026*	.067*	1.000	-.122*	-.061*	.007	.035*	.058*	-.112*	.118*	.030*	-.026*	.319*	.290*	.097*	.085*	-.022*
Education	.173*	-.066*	-.027*	-.068*	-.122*	1.000	.106*	.035*	.039*	.005	.102*	-.011	-.002	-.083*	-.011	-.274*	-.086*	-.104*	.030*
Employment-related	.084*	-.028*	-.026*	-.002	-.061*	.106*	1.000	-.005	.071*	-.028*	.074*	.020*	.002	-.037*	-.007	-.155*	-.060*	-.048*	.090*
Fine	.018*	.015	.005	-.005	.007	.035*	-.005	1.000	-.037*	.076*	.035*	-.022*	.001	-.036*	-.011	-.061*	-.037*	-.044*	.030*
Incarcerated	.048*	.032*	-.013	.042*	.035*	.039*	.071*	-.037*	1.000	.004	.041*	.092*	.047*	.057*	.005	.171*	-.034*	.035*	.076*
Life skills	.014	.045*	-.011	-.020*	.058*	.005	-.028*	.076*	.004	1.000	-.008	-.012	-.006	-.023*	.080*	-.004	.013	.012	-.011
Married	.204*	-.060*	-.174*	-.030*	-.112*	.102*	.074*	.035*	.041*	-.008	1.000	-.011	-.006	-.085*	-.013	-.259*	-.892*	-.061*	.213*
Mental health	.074*	.074*	.002	.013	.118*	-.011	.020*	-.022*	.092*	-.012	-.011	1.000	.035*	.067*	.022*	.157*	.010	.108*	.157*
Prison incidents	-.013	.006	-.009	.019*	.030*	-.002	.002	.001	.047*	-.006	-.006	.035*	1.000	.027*	.009	.061*	.010	.042*	-.022*
Recidivism	-.127*	-.012	.019*	.054*	-.026*	-.083*	-.037*	-.036*	.057*	-.023*	-.085*	.067*	.027*	1.000	-.165*	.273*	.074*	.116*	-.052*
Restitution	.003	.173*	.022*	-.042*	.319*	-.011	-.007	-.011	.005	.080*	-.013	.022*	.009	-.165*	1.000	-.033*	.002	-.008	-.039*
RPI	-.374*	.171*	.041*	.154*	.290*	-.274*	-.155*	-.061*	.171*	-.004	-.259*	.157*	.061*	.273*	-.033*	1.000	.232*	.202*	-.114*
Single	-.170*	.044*	-.290*	.017	.097*	-.086*	-.060*	-.037*	-.034*	.013	-.892*	.010	.010	.074*	.002	.232*	1.000	.062*	-.222*
Unstable employment	-.031*	.044*	-.004	.099*	.085*	-.104*	-.048*	-.044*	.035*	.012	-.061*	.108*	.042*	.116*	-.008	.202*	.062*	1.000	-.056*
White	.169*	-.007	.031*	-.040*	-.022*	.030*	.090*	.030*	.076*	-.011	.213*	.157*	-.022*	-.052*	-.039*	-.114*	-.222*	-.056*	1.000

*Pearson correlations significant at the $p \leq .01$ level

(Listwise N=22,388)

Table 2. Descriptive Statistics for Study Variables (All FWCOs)

	Frequency		Percent	
	Yes	No	Yes	No
Recidivism	3,020	30,208	9.1%	90.9%
First-time/Repeat Offenders:				
First-time offenders	26,054		78.4	
Repeat offenders	7,174		21.6	
White	17,678	15,550	53.2	46.8
Education:				
No H.S. diploma or GED	5,557		17.8	
H.S. diploma or GED	21,459		68.9	
Vocational/assoc. degree	333		1.1	
Bachelor's degree	3,439		11.0	
Post-graduate degree	359		1.2	
Marital status:				
Cohabiting	1,670	29,280	5.4	94.6
Married	10,778	20,172	34.8	65.2
Single	18,502	12,448	59.8	40.2
Mental health	11,822	15,770	42.8	57.2
Life skills	227	26,753	0.8	99.2
Alcohol abuse	1,347	25,633	5.0	95.0
Drug abuse	3,529	23,451	13.1	86.9
Unstable employment	11,252	15,504	42.1	57.9
Prison incidents	125	30,635	0.4	99.6
Criminal associates	4,427	26,333	14.4	85.6
Employment-related offense	4,016	26,744	13.1	86.9
Incarcerated	17,354	15,874	52.2	47.8
Fine	749	26,231	2.8	97.2
Restitution	10,527	16,453	39.0	61.0
Age ¹	38.807 (10.665)			
RPI ²	2.095 (1.755)			

¹ Continuous variable with a range of 18 years to 64.99 years; reporting mean and standard deviation.

² Categorical variable with a range of scores of 0 to 9 for offender's "Risk Prediction Index" score calculated by U.S. Probation Office; reporting mean and standard deviation.
(N=33,228)

Table 3. Logistic Regression of Recidivism on Demographics and Independent Variables (All FWCOs), without and with incarceration

	Model 1 (Without Incarceration)		Model 2 (With Incarceration)	
	β	Odds Ratios	β	Odds Ratios
White	-.215*	.807	-.220*	.802
Age	-.032*	.968	-.033*	.967
Education	-.112	.894	-.118	.889
Cohabiting	.362	1.437	.374	1.453
Single	.191	1.211	.195	1.215
Mental health	.332*	1.393	.325*	1.385
Life skills	-.919	.399	-.931	.394
Alcohol abuse	.008	1.008	.003	1.003
Drug abuse	-.321	.725	-.319	.727
Unstable employment	.527*	1.695	.531*	1.700
RPI	.307*	1.359	.299*	1.349
Prison incidents	.379	1.461	.348	1.417
Criminal associates	-.058	.944	-.065	.937
Employment-related	.081	1.085	.067	1.069
Fine	-.881	.414	-.867	.420
Restitution	-1.551*	.212	-1.551*	.212
First-time/repeat offender	.487*	1.628	.473*	1.604
Incarcerated			.143	1.154
Nagelkerke R^2	.236		.236	

* $p \leq .001$

Note: Being married was the reference group.
Listwise (N=22,388).

Table 4. Crosstabulations with χ^2 , First-time and Repeat FWCOs with All Variables

	FIRST-TIME FEMALE WHITE COLLAR OFFENDERS (n = 26,054)		REPEAT FEMALE WHITE COLLAR OFFENDERS (n = 7,174)		χ^2
	Yes	No	Yes	No	
Recidivism	1,613	24,441	1,407	5,767	1226.347*
White	14,671	11,383	3,007	4,167	468.148*
Education: No HS diploma/GED HS diploma or GED Voc./assoc. degree Bachelor's degree Post-graduate degree	3,966 16,928 272 2,977 307		1,591 4,531 61 462 52		314.313*
Marital status: Cohabiting Married Single	1,312 9,254 13,842	23,096 15,154 10,566	358 1,524 4,660	6,184 5,018 1,882	.095 485.738* 452.466*
Mental health	8,783	12,874	3,039	2,896	215.752*
Life skills	155	20,995	72	5,758	13.812*
Alcohol abuse	831	20,319	516	5,314	233.390*
Drug abuse	2,248	18,902	1,281	4,549	517.271*
Unstable employment	8,284	12,820	2,968	2,684	321.623*
Prison incidents	64	24,149	61	6,486	56.719*
Criminal associates	3,077	21,136	1,350	5,197	261.848*
Employment-related offense	3,476	20,737	540	6,007	169.370*
Incarcerated	12,527	13,527	4,827	2,347	831.429*
Fine	647	20,503	102	5,728	29.037*
Restitution	8,317	12,833	2,210	3,620	3.854
Age ¹	38.927 (SD=10.931)		38.373 (SD=9.629)		t=4.187*
RPI ²	1.670 (SD=1.357)		3.644 (SD=2.129)		t=-74.090*

*p<.001

¹ Continuous variable with a range of 18 years to 64.99 years; reporting only mean and standard deviation.² Categorical variable with a range of score of 0 to 9 for offender's "Risk Prediction Index" score calculated by U.S. Probation Office; reporting only mean and standard deviation.

Table 5. Logistic Regression of Recidivism on Independent and Control Variables for First-time Female White Collar Offenders (FWCOs) and Repeat Female White Collar Offenders (FWCOs)

	First-time FWCOs		Repeat FWCOs	
	β	Odds Ratios	β	Odds Ratios
White	-.244*	.783	-.150	.861
Age	-.037*	.964	-.023*	.977
Education	-.192*	.825	.011	1.011
Cohabiting	.150	1.162	.617*	1.854
Single	.243	1.275	.043	1.044
Mental health	.275*	1.317	.340*	1.404
Life skills	-17.494	.000	-.057	.944
Alcohol abuse	-.313	.731	.362	1.436
Drug abuse	.038	1.039	-.753*	.471
Unstable employment	.430*	1.537	.641*	1.898
RPI	.359*	1.432	.238*	1.269
Prison incidents	.469	1.599	.391	1.478
Criminal associates	.058	1.059	-.196	.822
Employment-related	-.048	.953	.314	1.369
Incarcerated	.151	1.163	.130	1.139
Fine	-1.004	.366	-.660	.517
Restitution	-1.549*	.212	-1.547*	.213
Nagelkerke R ²	.205		.222	

*p≤.001